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**Appendices  
to  
Discipline as a Means of Assuring  
Continuing Competence  
in the Professions**

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**Prepared by  
Barry J. Reiter  
for  
The Professional Organizations Committee**



GOVT PUBNS

APPENDICES


TO

DISCIPLINE AS A MEANS OF ASSURING CONTINUINGCOMPETENCE IN THE PROFESSIONS

by

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University of Toronto

Prepared for  
The Professional Organizations Committee



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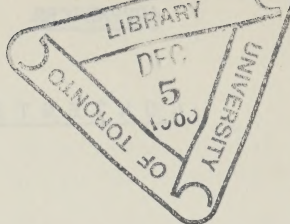
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APPENDIX I - LAW

The Law Society Act  
R.S.O. 1970, c. 238

DISCIPLINE

33. (1) No disciplinary action under section 34, 35, 37 or 38 shall be taken unless,

- (a) a complaint under oath has been filed in the office of the Secretary and a copy thereof has been served on the person whose conduct is being investigated;
- (b) the person whose conduct is being investigated has been served with a notice of the time and place of the hearing; and
- (c) a committee of Convocation has heard evidence of or on behalf of the complainant and, if the persons whose conduct is being investigated appears at the hearing and so requests, has heard his evidence and any evidence on his behalf and has reached the decision that he is guilty.

(2) Any person presiding at a hearing may administer oaths to witnesses and require them to give evidence under oath.

(3) If the person whose conduct is being investigated fails to appear in answer to the notice at the time and place appointed, the hearing may be conducted in his absence.

(4) Hearings shall be held *in camera*, but if the person whose conduct is being investigated requests otherwise by a notice in writing delivered to the Secretary before the day fixed for the hearing, the committee may conduct the hearing in public or otherwise as it considers proper.

(5) A hearing may be adjourned at any time and from time to time.

(6) A person whose conduct is being investigated, if present in person at the hearing, has the right to be represented by counsel, to adduce evidence and to make submissions, and any such person may be compelled to attend and give evidence in the manner provided in sub-section 10, but such person shall be advised of his right to object to answer any question under section 9 of *The Evidence Act* and section 5 of the *Canada Evidence Act*.

(7) At a hearing, the complainant and the person whose conduct is being investigated have the right to examine the witnesses called by them respectively and to cross examine the witnesses opposed in interest, including the deponent of an affidavit or a statutory declaration submitted in evidence.

(8) The oral evidence submitted at a hearing shall be taken down in writing or by any other method authorized by *The Evidence Act*.



(9) The rules of evidence applicable in civil proceedings are applicable at a hearing, except that an affidavit or statutory declaration of any person is admissible in evidence as *prima facie* proof of the statements made therein.

(10) The Treasurer, the chairman or a vice-chairman of a committee of Convocation, or the Secretary may, and the Secretary upon application of a person whose conduct is being investigated shall, issue a summons in the prescribed form commanding the attendance and examination of any person as a witness, and the production of any document or thing, the production of which could be compelled at the trial of an action, before the committee at the time and place mentioned in the summons and stating that failure to obey the summons will render the person liable to imprisonment on an application to the Supreme Court, but the person whose attendance is required is entitled to the like conduct money and payment for expenses and loss of time as upon attendance as a witness at a trial in the Supreme Court.

(11) If any person,

(a) on being duly summoned to appear as a witness makes default in attending, or

(b) being in attendance as a witness refuses to take an oath legally required to be taken, or to produce any document or thing in his power or control legally required to be produced by him, or to answer any question which he is legally required to answer; or

(c) does any other thing which would, if the committee had been a court of law having power to commit for contempt, have been contempt of that court,

the person presiding at the hearing may certify the offence of that person under his hand to the Supreme Court and the court may thereupon inquire into the alleged offence and after hearing any witnesses who may be produced against or on behalf of the person charged with the offence, and after hearing any submissions that may be offered in defence, punish or take steps for the punishment of that person in the like manner as if he had been guilty of contempt of court.

(12) The decision taken after a hearing shall be in writing and shall contain or be accompanied by the reasons for the decision in which are set out the findings of fact and the conclusions of law, if any, based thereon, and a copy of the decision and the reasons therefor, together with a notice to the person whose conduct is being investigated of his right of appeal, shall be served upon him within thirty days after the date of the decision.

(13) Any document required to be served under this Act upon a person whose conduct is being investigated shall be served personally upon him or by mailing a copy thereof in a registered letter addressed to him at his last known residence or office address as shown by the records of the Society,

and service shall be effected not less than ten days before the date of the hearing or the event or thing required to be done, as the case may be, and proof by affidavit of the service is sufficient. R.S.O. 1970, c. 238, s. 33.

**34.** If a member is found guilty of professional misconduct or of conduct unbecoming a barrister and solicitor after due investigation by a committee of Convocation, Convocation may by order cancel his membership in the Society by disbarring him as a barrister and striking his name off the roll of solicitors or may by order suspend his rights and privileges as a member for a period to be named or may by order reprimand him or may by order make such other disposition as it considers proper in the circumstances. R.S.O. 1970, c. 238, s. 34.

**35.** If a member has been found pursuant to any Act to be mentally incompetent or mentally ill, or has been found after due inquiry by a committee of Convocation incapable of practising law as a barrister and solicitor by reason of age, physical or mental illness including addiction to alcohol or drugs, or any other cause, Convocation may by order limit or suspend his rights and privileges as a member for such time and on such terms as it considers proper in the circumstances. R.S.O. 1970, c. 238, s. 35.

**37.** If a committee of Convocation finds that a member has been guilty of professional misconduct or conduct unbecoming a barrister and solicitor which in its opinion does not warrant disbarment, suspension or reprimand in Convocation, the committee may by order reprimand him. R.S.O. 1970, c. 238, s. 37.

**38.** If a student member is found after due inquiry by a committee of Convocation guilty of conduct unbecoming a student member, the committee may by order reprimand him or Convocation may by order cancel his student membership or may by order suspend his rights and privileges as a student member for a period to be named or may by order reprimand him or may by order make such other disposition as it considers proper in the circumstances. R.S.O. 1970, c. 238, s. 38.

**39.**—(1) Any member who has been found guilty under section 37 or any student member who has been found guilty under section 38 and, in either case, has been ordered to be reprimanded in committee, may appeal from the order of reprimand to Convocation within fifteen days from the day upon which he is served with the order of the committee.

(2) An appeal under this section shall be by motion, notice of which shall be served upon the Secretary, and the record shall consist of a copy of the proceedings before the committee, the evidence taken, the committee's report and all decisions, findings and orders of the committee in the matter.

(3) Upon the hearing of an appeal under this section, Convocation may vary the punishment imposed by the committee or may refer the matter or any part thereof back to a committee with such directions as it considers proper or may make such order as it considers proper in the circumstances.



(4) No benchler who sat on the committee of Convocation when the order appealed from was made shall take any part in the hearing of the appeal in Convocation.

(5) Subject to section 44, the decision of Convocation under this section is final and not subject to any further appeal. R.S.O. 1970, c. 238, s. 39.

40. A person whose membership or student membership has been cancelled or whose rights and privileges as a member or student member have been suspended or who has been reprimanded may be ordered to pay the expense, or part of the expense, incurred by the Society in the investigation or hearing of any complaint in respect of which he has been found guilty. R.S.O. 1970, c. 238, s. 40.

41. Where it appears that disciplinary proceedings against a member or student member were unwarranted, Convocation may order that such costs as it considers just be paid by the Society to the member or student member whose conduct was the subject of the proceedings. R.S.O. 1970, c. 238, s. 41  
...

43. (1) Where a member or former member dies, disappears or leaves Ontario or a person's membership in the Society is cancelled or his rights and privileges as a member are suspended and, in any such event, his practice is neglected to the prejudice of any person or no provision has been made for the protection of his clients' interests, a judge of the Supreme Court may, upon an *ex parte* application by the Society, by order appoint a person as trustee, with or without bond, to take possession of any property in the possession of or under the control of such member or former member for the purpose of preserving, carrying on or winding up the practice of such member or former member.

(2) A person appointed under subsection 1 shall, in respect of any trust property of such member or former member, be the trustee thereof, and he shall in respect thereof take the place of the personal representative, committee or other representative, if any, of such member or former member.

(3) Any person may apply to a judge of the Supreme Court for an order varying or discharging any order made under subsection 1.

(4) The judge may in any order under this section make provision for the remuneration, disbursements and indemnification of the trustee out of such moneys or otherwise as the judge may specify. R.S.O. 1970, c. 238, s. 43.

44. (1) Any person dissatisfied with a decision of Convocation made under section 30, 32 or 46, or any person against whom an order has been made under section 34, 35 or 36, or any person against whom an order, other than an order of reprimand in committee, has been made under section 38, or any person whose punishment has been ordered to be increased under subsection 3 of section 39 may appeal from the decision or order to the Court of Appeal within fifteen days from the day upon which he is served with the decision or order.

(2) Upon the request of any person desiring to appeal and upon payment of the cost thereof, the Secretary shall furnish such person with a certified copy of all proceedings, evidence, reports, orders and papers received as evidence in Convocation and any committee thereof in dealing with and disposing of the matter complained of.

(3) If the appellant fails to pay the cost of the certified copy and the cost of such additional copies of the evidence as may be reasonably required for the purposes of the appeal within fifteen days after written demand from the Secretary, the appeal shall be deemed to be abandoned.

(4) An appeal under this section shall be by motion, notice of which shall be served upon the Secretary, and the record shall consist of a copy, certified by the Secretary, of the proceedings before Convocation or any committee thereof, the evidence taken, the report of Convocation or any committee thereof and all decisions, findings and orders of Convocation or any committee thereof in the matter.

(5) Except as otherwise provided, appeals under this section shall be in accordance with the practice in appeals from the decision or order of a judge of the Supreme Court.

(6) Upon the hearing of an appeal under this section the Court of Appeal may make such order as the court considers proper or may refer the matter or any part thereof back to Convocation with such directions as the court considers proper.

(7) The Court of Appeal may make such order as to the costs of the appeal as the court considers proper. R.S.O. 1970, c. 238, s. 44.

**45.** (1) When a person's membership or student membership is cancelled, all his rights and privileges as a member or student member, as the case may be, cease, or, when a person's membership or student membership is suspended, the member or student member shall, during the period of suspension, possess no rights or privileges as a member or student member.

(2) Where an appeal under section 44 is pending, the decision or order appealed against shall not thereby be stayed, but an application may be made to a judge of the Court of Appeal for a stay of the decision or order pending the disposition of the appeal, and the judge may dispose of the application as he considers proper and in so doing he may impose such terms and conditions as he considers appropriate. R.S.O. 1970, c. 238, s. 45.

**46.** Where a person's membership or student membership is cancelled, he may apply to be readmitted, and Convocation, after due inquiry by a committee thereof, may readmit him as a member or student member, as the case may be. R.S.O. 1970, c. 238, s. 46.

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48. Upon the readmission of a person as a member or student member or upon the termination of the suspension of the rights and privileges of a member or student member or upon the reprimand of a member or student member, Convocation or a committee thereof may impose upon him such terms and conditions as it considers proper. R.S.O. 1970, c. 238, s. 48.

49. Notice of admission to membership and of any cancellation, suspension, resignation, readmission or other change in a member's status in the Society shall be given forthwith by the Secretary to the Registrar of the Supreme Court who shall keep a record thereof. R.S.O. 1970, c. 238, s. 49.

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#### COMPENSATION FUND

51.—(1) The Society shall continue to maintain the fund known as "the Compensation Fund" and shall continue to hold it in trust for the purposes of this section.

(2) The Compensation Fund shall be made up of,

- (a) all moneys paid by members of the Society under subsection 3;
- (b) all moneys earned from the investment of moneys in the Fund;
- (c) all moneys recovered under subsection 7; and
- (d) all moneys contributed by any person.

(3) Every member, other than those of a class exempted by the rules, shall pay to the Society for the Compensation Fund such sum as is prescribed from time to time by the rules.

(4) The Society may insure with any insurer licensed to carry on business in Ontario for such purposes and on such terms as Convocation considers expedient in relation to the Compensation Fund, and, in such event, the moneys in the Fund may be used for the payment of premiums.

(5) Convocation in its absolute discretion may make grants from the Compensation Fund in order to relieve or mitigate loss sustained by any person in consequence of dishonesty on the part of any member in connection with such member's law practice or in connection with any trust of which he was or is a trustee, notwithstanding that after the commission of the act of dishonesty he may have died or ceased to administer his affairs or to be a member.

(6) No grant shall be made out of the Compensation Fund unless notice in writing of the loss is received by the Secretary within six months after the loss came to the knowledge of the person suffering the loss or within such further time, not exceeding eighteen months, as in any case may be allowed by Convocation.

(7) If a grant is made under this section, the Society is subrogated to the amount of the grant to any rights or remedies to which the person receiving the grant was entitled on account of the loss in respect of which the grant was made against the dishonest member or any other person, or, in the event of the death or insolvency or other disability of such member or other person, against his personal representative or other person administering his estate.

(8) A person to whom a grant is made under this section, or, in the event of his death or insolvency or other disability, his personal representative or other person administering his estate, has no right to receive anything from the dishonest member or his estate in respect of the loss in respect of which the grant was made until the Society has been reimbursed the full amount of the grant.

(9) Where a grant has been made under this section and the dishonest member has been declared a bankrupt, the Society is entitled to prove against the bankrupt's estate for the full amount of the claim of the person to whom the grant was made and to receive all dividends on such amount until the Society has been reimbursed the full amount of the grant.

(10) Convocation may delegate any of the powers conferred upon it by this section to a committee of Convocation and, whether or not Convocation has made any such delegation, it may appoint any member as a referee and delegate to him any of the powers conferred upon it by this section that are not delegated to a committee.

(11) Where Convocation has delegated any of its powers under this section to a committee or to a referee, the committee or referee, as the case may be, shall report as required to Convocation, but where there is a delegation to both a committee and a referee, the referee shall report as required to the committee.

(12) There may be paid out of the Compensation Fund the costs of its administration, including the costs of investigations and hearings and all other costs, salaries, and expenses necessarily incidental to the administration of the Fund. R.S.O. 1970, c. 238, s. 51.

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**53.** The Society may make arrangements for its members respecting indemnity for professional liability and respecting the payment and remission of premiums in connection therewith and prescribing levies to be paid by members or any class thereof and exempting members or any class thereof from all or any part of any such levy. R.S.O. 1970, c. 238, s. 53.

#### RULES

**54.** (1) Subject to section 55, Convocation may make rules relating to the affairs of the Society and, without limiting the generality of the foregoing,

1. providing procedures for the making, amendment and revocation of the rules;

2. prescribing the seal and the coat of arms of the Society;
3. providing for the execution of documents by the Society;
4. respecting the borrowing of money and the giving of security therefor;
5. fixing the financial year of the Society and providing for the audit of the accounts and transactions of the Society;
6. providing for the time and manner of and the methods and procedures for the election of benchers;
7. providing procedures for the election of the Treasurer, the filling of a vacancy in the office of Treasurer, the appointment of an acting Treasurer to act in the Treasurer's absence or inability to act, and prescribing the Treasurer's duties;
8. providing for the appointment of and prescribing the duties of the Secretary, one or more deputy secretaries and assistant secretaries and such other officers as are considered appropriate;
9. respecting Convocation;
10. providing for the establishment, composition, jurisdiction and operation of standing and other committees and delegating to any committee such of the powers and duties of Convocation as may be considered expedient;
11. governing honorary benchers, *ex officio* benchers and honorary members and prescribing their rights and privileges;
12. governing members, life members and student members, and prescribing their rights and privileges;
13. prescribing fees and levies for members and student member or any class of either of them, and providing for the payment and remission thereof and exempting any class of either of them from all or any part of such fees or levies;
14. respecting the Compensation Fund and prescribing the amount of the levy to be paid to the Society for the Fund and exempting any class of members from all or any part of such levy;
15. prescribing oaths for members and student members;
16. providing for the payment to the Society by any member of the cost of any investigation or audit of his books, records, accounts and transactions;
17. providing for and governing meetings of members or representatives of members;



18. prescribing procedures for the call to the bar of barristers and the admission and enrolment of solicitors;
19. defining and governing the employment of student members while under articles;
20. providing and governing bursaries, scholarships, medals and prizes;
21. providing for and governing extension courses, continuing legal education, and legal research;
22. governing degrees in law;
23. providing for and governing libraries;
24. providing for the occasional appearance as counsel in the courts of Ontario and before provincial judges, with the consent of the Treasurer and of the court or judge, of members of the legal profession from outside Ontario;
25. providing for the establishment, maintenance and administration of a benevolent fund for members and the dependants of deceased members;
26. prescribing forms and providing for their use, except the form of summons referred to in subsection 10 of section 33.

(2) The rules made under subsection 1 shall be interpreted as if they formed part of this Act. R.S.O. 1970, c. 238, s. 54 (1, 2).

(3) A copy of the rules made under subsection 1, as amended from time to time,

(a) shall be filed in the office of the Attorney General; and

(b) shall be available for public inspection in the office of the Secretary. R.S.O. 1970, c. 238, s. 54 (3); 1972, c. 1, s. 9 (7).

#### REGULATIONS

**55.** Subject to the approval of the Lieutenant Governor in Council, Convocation may make regulations respecting any matter that is outside the scope of the rule-making powers specified in section 54 and, without limiting the generality of the foregoing,

1. respecting any matter ancillary to the provisions of this Act with regard to the admission, conduct and discipline of members and student members and the suspension and restoration of their rights and privileges, the cancellation of memberships and student memberships, the resignation of members, and the readmission of former members and student members;

2. requiring and prescribing the books, records and accounts to be kept by members and providing for the exemption from such requirements of any class of members;
3. requiring and providing for the examination or audit of members' books, records, accounts and transactions and the filing with the Society of reports with respect thereto,
4. authorizing and providing for the preparation, publication and distribution of a code of professional conduct and ethics.
5. respecting the reporting and publication of the decisions of the courts;
6. defining and governing the employment of barristers and solicitors clerks;
7. respecting legal education, including the Bar Admission Course;
8. providing for the establishment, operation and dissolution of county and district law associations and respecting grants and loans to such associations;
9. prescribing the form of the summons referred to in subsection 10 of section 33. R.S.O. 1970, c. 238, s. 55.

Regulations 12, 13, 14, 15, 16, 17, 19, 22 and 23.

## DISCIPLINE

### INTERPRETATION

12. In this section and in sections 13 and 14,

- (a) "chairman" means the chairman of the Committee;
- (b) "Committee" means the Discipline Committee;
- (c) "vice-chairman" means the vice-chairman of the Committee

### INVESTIGATION AND HEARING OF COMPLAINTS

13. (1) Where information comes to the notice of the Society that indicates that a member may have been guilty of professional misconduct or of conduct unbecoming a barrister and solicitor, the Secretary shall make such preliminary investigation of the matter as he considers proper, and where in his opinion there are reasonable grounds for so doing, he shall refer the matter promptly to the Committee or the chairman or vice-chairman for further directions.

(2) Subject to the directions of the Committee or the chairman or vice-chairman, the Secretary shall,

- (a) prepare and complete or cause to be completed under oath a complaint and file it in the office of the Secretary;
- (b) serve upon the member whose conduct is being investigated a copy of the complaint, a notice of the time and place of the hearing and a summons requiring him to attend thereat; and
- (c) make all necessary arrangements for the conduct of the hearing, including as appropriate, the appointment of counsel for the Society, the arrangements for oral evidence to be taken down in writing, the issue of summonses to witnesses, the production of documents and things, and the notification to all members of the Committee of the time and place of the hearing.

(3) Subject to subsection 4, a quorum of the Committee is three members of the Committee who are not *ex officio* benchers.

(4) A quorum of the Committee for the granting of an uncontested adjournment is one member of the Committee who is not an *ex officio* bencher.

(5) The Committee may amend a complaint, but where in the opinion of the Committee the member may be prejudiced by the amendment, the Committee shall adjourn the hearing of the complaint as amended to a later date.

(6) Where at the conclusion of the hearing of a complaint or amended complaint against a member, such complaint or amended complaint has been established to the satisfaction of the Committee and the Committee has not by order reprimanded him, the Committee shall report in writing to Convocation setting forth a summary of the evidence at the hearing, its findings of fact and conclusions of law, if any, based thereon and its recommendations as to the action to be taken by Convocation on the complaint.

(7) The Secretary shall,

- (a) prepare the report referred to in subsection 6 for approval by the Committee, and the Committee's approval shall be evidenced by the signature thereto of the member of the Committee who presided at the hearing or in his absence by another member of the Committee who was present at the hearing; and
- (b) serve upon the member whose conduct is being investigated a copy of the report as so approved, a notice of the time and place of the Convocation that will consider the report, a summons requiring him to attend thereat and a notice substantially as follows:

"If you intend to dispute any statement of fact or finding of fact contained in the attached report of the Discipline Committee at the time of its consideration by Convocation, you are required to file with the Secretary not later than the day preceding Convocation a written statement setting forth any such statement of fact or finding of fact that you intend to dispute."

#### INVITATIONS TO ATTEND

14. Where there comes to the notice of the Society, as a result of a preliminary investigation by the Secretary or otherwise, information that indicates that a member may have been guilty of a minor breach of discipline or that indicates there is a possibility that his conduct may result in a breach of discipline, the Committee or the chairman or vice chairman may direct the Secretary, without any formal complaint being completed and filed, to invite the member to appear before the Committee to enable it to make an informal investigation of the matter, and the Committee, in addition to any of its other powers, may after such informal investigation advise the member with respect to the matter.

#### STUDENT MEMBERS

15. Sections 13 and 14 apply *mutatis mutandis* to student members in respect of conduct unbecoming a student member.

#### RESIGNATIONS

16. (1) Every application of a member or student member for permission to resign shall be in writing and sent to the Secretary accompanied by a statutory declaration (or if the applicant is not a resident of Canada, an affidavit) setting forth,

- (a) his age, date of call to the bar, place of residence, office address, if any, number of years in practice, if any, and stating briefly the reasons for the application;
- (b) that all trust funds or clients' property for which the applicant was responsible have been accounted for and paid over to the persons entitled thereto and an accountant's certificate to that effect shall be attached and marked as an exhibit or, alternatively, that the applicant has not handled trust funds or other clients' property;
- (c) that all clients' matters have been completed and disposed of or that arrangements have been made to the clients' satisfaction to have their papers returned to them or turned over to some other barrister and solicitor or, alternatively, that the applicant has not engaged in practice;
- (d) that the applicant is not aware of any claim against him in his professional capacity or in respect of his practice; and
- (e) such additional information or explanation as may be relevant by way of amplification of the foregoing.

(2) The applicant shall also furnish proof of publication in the Ontario Reports of a notice of his intention to apply for permission to resign in the form prescribed in the rules, such notice to be published at least thirty days before the application is sent to the Secretary.

(3) Every application for permission to resign shall be referred to the Finance Committee for consideration and report to Convocation.

(4) The Finance Committee may require additional information and may accept undertakings from the applicant and in reporting its recommendations to Convocation it may include conditions which are to be complied with by the applicant as a term of granting permission to resign.

(5) Where the applicant believes that there may be good reason for dispensing with any of the foregoing requirements, he may make application to the Finance Committee setting forth his reasons and the Committee may in its discretion dispense with any of such requirements.

(6) Where a member has been found to be mentally incompetent and a committee of his affairs has been appointed, the application for permission to resign may be made by his committee.

(7) Notwithstanding anything in subsections 1 to 6, if a report of the Discipline Committee is before Convocation recommending the disbarment of a member, the member may request Convocation to permit him to resign, and Convocation may grant the request upon such terms and conditions as it considers proper.

## BOOKS, RECORDS AND ACCOUNTS

### INTERPRETATION

17. In this section and in sections 18 to 22,

- (a) "client" includes any person or body of persons, corporate or unincorporate, from whom or on whose behalf a member in connection with his practice receives money or other property;
- (b) "member" includes a firm of members;
- (c) "money" includes current coin, government or bank notes, cheques, drafts, post office orders or express or bank money orders.

### RECORDS

19.--(1) Every member shall maintain books, records and accounts in connection with his practice to record all money and other negotiable property received and disbursed, and as a minimum requirement every member shall maintain,

- (a) a book of original entry showing the date of receipt and source of money received in trust for each client and identifying the client on whose behalf the trust money is received;
- (b) a book of original entry showing all disbursements out of money held in trust for each client and showing each cheque number, the date of each disbursement, the name of each recipient, and identifying the client on whose behalf each disbursement is made out of money held in trust;
- (c) a clients' trust ledger showing separately for each person on whose behalf money has been received in trust all such money received and disbursed and any unexpended balance;
- (d) a record showing all transfers of money between clients' trust ledger accounts and explaining the purpose for which each transfer is made;
- (e) a book of original entry showing the date of receipt and source of all money received other than trust money;



- (f) a book of original entry showing all disbursements of money other than trust money and showing each cheque or voucher number, the date of each disbursement, and the name of each recipient;
- (g) a fees book or chronological file of copies of billings showing all fees charged and other billings to clients, the dates such charges are made, and identifying the clients so charged;
- (h) a record showing a comparison made monthly of the total of balances held in the trust account or accounts and the total of all unexpended balances of funds held in trust for clients as they appear from the books and records together with the reasons for any differences between the totals and supported by.
  - (i) a detailed listing made monthly showing the amount of trust money held for each client and identifying each client for whom trust money is held, and,
  - (ii) a detailed reconciliation made monthly of each trust bank account, and

such detailed listings and reconciliations shall be retained as records supporting the monthly trust comparisons;

- (i) a record showing all negotiable or other valuable property, other than money, held in trust from time to time for all clients;
  - (j) bank statements or pass books, cashed cheques and detailed duplicate deposit slips for all trust and general accounts.
- (2) The books, records and accounts required to comply with subsection 1,
- (a) shall be entered and posted currently at all times, and the trust comparison required by clause *h* of subsection 1 shall be made monthly within fifteen days from the effective date of each comparison;
  - (b) shall be entered and posted in ink or a duplication thereof, or by machine, and shall be preserved for at least the six-year period previous to the most recent fiscal year-end of the member, with the exception of trust cash receipt and disbursement books of original entry and the books and records required by clauses *c*, *h* and *i* of subsection 1 which shall be preserved for at least ten years.

#### INVESTIGATION

22. (1) The chairman or a vice-chairman of the Discipline Committee may at any time require an investigation to be made by a person designated by him of the books and accounts of any member for the purpose of ascertaining and reporting whether sections 18, 19 and 20 have been and are being complied with by such member who shall produce forthwith to such person all evidence, vouchers, records, books, papers and shall furnish such explanations as such person may require for the purpose of his investigation.

(2) Before instituting an investigation on a complaint made by a third person, the chairman or vice-chairman of the Discipline Committee may require *prima facie* evidence that a ground of complaint exists.

(3) All investigations commenced under this section shall be reported monthly to the Treasurer.

(4) Nothing in this section limits the right of Convocation or the Discipline Committee to institute further investigations or to require the filing of other reports.

## CODE OF ETHICS

23.-- (1) The Professional Conduct Committee is authorized to prepare and publish a handbook containing the code of professional conduct and ethics and the rulings with respect thereto under the title "Professional Conduct Handbook".

(2) Until such time as a new edition of the Professional Conduct Handbook is published, the Secretary shall furnish a copy of the current edition thereof to every person who becomes a member or student member and, upon request, to any other person.

(3) When a new edition of the Professional Conduct Handbook is published, the Secretary shall furnish a copy thereof to every member and student member and, upon request, to any other person.

Rules 27, 37 and 38.

## STANDING COMMITTEES OF CONVOCATION

### COMMITTEES ESTABLISHED

27. There shall be the following standing committees of Convocation:

1. Finance.
2. Legal Education.
3. Admissions.
4. Discipline.
5. Professional Conduct.
6. Libraries and Reporting.
7. Unauthorized Practice.
8. Public Relations.
9. Legislation and Rules.

## DISCIPLINE COMMITTEE

### RESPONSIBILITIES

37. The Committee is responsible to Convocation for all matters relating to the conduct and discipline of members and student-members and for the administration of the Compensation Fund, and it may make such arrangements and take such steps as it considers advisable to carry out its responsibilities.

## PROFESSIONAL CONDUCT COMMITTEE

### COMPOSITION

38.—(1) The Professional Conduct Committee shall be composed of the chairman and the vice-chairman of the Discipline Committee, a member of the Legal Aid Committee, and at least four other members.

### RESPONSIBILITIES

(2) The Committee is responsible to Convocation for dealing with all matters relating to professional conduct and making reports and recommendations to Convocation with reference thereto.

(3) The Committee may give members and student members of the Society such opinions, advice and assistance as may be deemed advisable, and, subject to the approval of Convocation, may make such rulings and take such further steps as the Committee deems necessary and advisable for the maintenance of the highest standards of conduct.

Professional Conduct Handbook

Rulings 1, 9, 20 and 33.

**Ruling 1**

**CANONS OF ETHICS**

**Adoption by Convocation**

Convocation has adopted as Ruling 1 the Canons of Legal Ethics of The Canadian Bar Association. They are set out below together with the prefatory statement made by the Association:

**CANONS OF LEGAL ETHICS**

Approved by The Canadian Bar Association, at the Fifth Annual Meeting, Ottawa, September 2nd, 1920, as a correct, though not exhaustive, statement of some of the ethical principles which should be observed by the members of the legal profession.

It is not possible to frame a set of rules which will particularize all the duties of the lawyer in all the varied relations of his professional life, and no attempt has been made to do so.

The following Canons of Ethics should therefore be construed as a general guide and not as a denial of the existence of other duties equally imperative though not specifically mentioned.

The lawyer is more than a mere citizen. He is a minister of justice, an officer of the Courts, his client's advocate, and a member of an ancient, honourable and learned profession.

In these several capacities, it is his duty to promote the interests of the State, serve the cause of justice, maintain the authority and dignity of the Courts, be faithful to his clients, candid and courteous in his intercourse with his fellows and true to himself.

**1. *To the State***

(1) He owes a duty to the State, to maintain its integrity and its law and not to aid, counsel, or assist any man to act in any way contrary to those laws.

(2) When engaged as a public prosecutor his primary duty is not to convict, but to see that justice is done; to that end he should withhold no facts tending to prove either the guilt or innocence of the accused.

### **Ruling 9**

#### **DISBARRED PERSONS**

Employment by solicitors

No member of The Law Society of Upper Canada shall without the express approval of Convocation retain, occupy office space with, use the services of or employ in any capacity having to do with the practice of law any person who in Ontario, or elsewhere, has been disbarred and struck off the Rolls, or has been suspended, or has been involved in disciplinary action and has been permitted to resign as a result thereof, and who has not yet been readmitted.

### **Ruling 20**

#### **LETTERS FROM THE LAW SOCIETY**

##### **Failure to answer is a disciplinary offence**

In a notice to the profession published in February 1945 and republished in January 1955 the Discipline Committee ruled that:

... it is a strict duty of a member of the Law Society to reply promptly to any letter received from the Society's Secretary relating to the professional conduct of such member. Failure to do so is, in the opinion of the Committee, professional misconduct and conduct unbecoming a member of the Society and deserving of disciplinary action.

Due respect for the disciplinary jurisdiction of its Law Society would soon disappear not only among its own members but among the public at large, if a member of the Society were permitted to ignore and indeed to defy the earnest efforts of the Society to maintain an unassailable standard of professional conduct.

### **Ruling 33**

#### **NOTIFICATION OF BREACHES TO THE SOCIETY**

Unless it be privileged or otherwise unlawful it is proper for any member to bring to the attention of the Society any instance involving or appearing to involve professional misconduct or conduct unbecoming a barrister, solicitor or student-at-law or reflecting on the honour of the Bar and the duty of every member to bring such instances to the Society's attention when they involve shortage of trust funds.



## Code of Professional Conduct

### PREFACE<sup>1</sup>

The legal profession has developed over the centuries to meet a public need for legal services on a professional basis, that is to say, the provision of advice and representation respecting the protection or advancement of the rights, liberties and property of a person by a trusted adviser with whom such person has a personal relationship and whose integrity, competence and loyalty are assured.<sup>2</sup>

In order adequately to meet this need for legal services, lawyers and the quality of the service they provide must command the confidence and respect of the public, and that can only be achieved by their establishing and maintaining a reputation for integrity and for high standards of legal skill and care. The lawyers of many countries in the world, despite the differences in legal systems, practices, procedures and customs, have imposed upon themselves substantially the same basic standards, and these standards place the main emphasis upon integrity.

In Canada, the provincial legislatures have entrusted to the legal profession through its Governing Bodies the responsibility of maintaining standards of professional conduct and of disciplining lawyers who fail to meet them. The pertinent laws use various terms to describe conduct which is subject to discipline, such as "professional misconduct", "conduct unbecoming", and "acts derogatory to the honour or dignity of the Bar". Some statutes also provide that disciplinary action may be taken if a lawyer is convicted of an indictable offence, or for "misappropriation or wrongful conversion" or "gross negligence", or for conduct "inimical to the best interests of the public", as well as for breach of the applicable statute itself or of rules or regulations made under it.<sup>3</sup> These terms can only be construed in the context of the statutes in which they are used and accordingly no attempt at definition is made here. Generally, the preparation and publication of a code of ethics and professional conduct has been left to the profession, and this responsibility must be accepted and carried out by the profession.

In fulfilling his professional responsibilities the lawyer must necessarily assume various roles that require the performance of many difficult tasks. Not every situation which he may encounter can be foreseen, but the fundamental ethical principles are set out in this Code to guide him and provide a framework within which he must with courage and ability undertake to provide the legal services which an ever-changing and complex society requires.<sup>4</sup> Although each lawyer must decide for himself the extent to which his conduct should rise above the minimum standards, the desire for the respect and confidence of the members of the society which he serves and of the members of his profession should motivate him to maintain the highest possible degree of ethical conduct. The standards of professional conduct of lawyers represent the greatness and strength of the legal profession; it will not and must not permit of any compromise in those standards.

The Code of Professional Conduct which follows can only be understood and applied in the light of its primary concern for the protection of the public interest. This principle is implicit in the legislative grants of self-government referred to above. Inevitably the practical application of the Code's complex provisions to

the diverse situations confronted by an active profession in a changing society will reveal gaps, ambiguities and apparent inconsistencies.<sup>5</sup> The principle of protection of the public interest will serve to guide the reader to the true intent of the Code.

#### NOTES

1. The footnotes relate the provisions of the Code to pertinent earlier Canons, Codes, rulings, by-laws, statutes, judicial dicta, text-books and articles, and to certain other materials. They are selective, not exhaustive, and merely supplement the text. For abbreviations and citations key and bibliography, see page 67.
2. "The core of the proposition is that problems of . . . rights or property call for a personal relationship with a trusted adviser, whose discretion is absolute, who serves no master but his client, and whose competence is assured. The codes and traditions of the professions who supply these services support the basic proposition. They also display the uniformity that its truth would lead one to expect." *Bennion*, p. 16.
3. Abstract (1974) of disciplinary provisions:
  - Alberta* The Legal Profession Act, R.S.A. 1970 c. 203
    - s. 47 "conduct unbecoming a barrister and solicitor or a student-at-law"
    - "inimical to the best interests of the public or the members of the Society"
    - "tends to harm the standing of the legal profession generally"
  - British Columbia* Legal Professions Act, R.S.B.C. 1960 c. 214 as am. by S.B.C. 1971 c. 31
    - s. 48 "misappropriation or wrongful conversion"
    - "professional misconduct"
    - "conduct unbecoming a member"
    - "breach of this Act or the Rules made hereunder"
  - s. 56 "convicted of an indictable offence"
  - Manitoba* The Law Society Act, R.S.M. 1970, c. L-100
    - s. 45 "professional misconduct"
    - "conduct unbecoming a barrister, solicitor or student"
  - New Brunswick* The Barristers Society Act, 1931, S.N.B. 1931 c. 50 as am. by S.N.B. 1954 c. 99
    - s. 19 "professional misconduct or conduct unbecoming a barrister or solicitor"
    - default re clients' moneys
    - breach of Act or regulation
  - Newfoundland* The Law Society Act, R.S.N. 1952 c. 115
    - s. 37 "professional misconduct"
    - "conduct unbecoming a Barrister, Solicitor, Student-at-law or Articled Clerk"
  - Nova Scotia* Barristers and Solicitors Act, R.S.N.S. 1967 c. 18
    - s. 28 "professional misconduct"
    - "conduct unbecoming a barrister or articled clerk"
  - s. 31 "absconding, insane or insolvent"
  - Ontario* The Law Society Act, R.S.O. 1970 c. 238
    - s. 34 "professional misconduct"
    - "conduct unbecoming a barrister and solicitor"
  - s. 38 "conduct unbecoming a student member"
  - Prince Edward Island* The Legal Profession Act, R.S.P.E.I. 1951 c. 84 as am. by S.P.E.I. 1969 c. 24
    - s. 45 "professional misconduct"
    - "conduct unbecoming a barrister, attorney, solicitor or articled clerk"
  - Quebec* Bar Act, S.Q. 1966-67 c. 77
    - s. 105 "derogatory to the honour or dignity of the Bar or prejudicial to the discipline of its members"
    - "position or office . . . incompatible with the practice of the profession of advocate"
    - "occupation, industry or trade carried on or the position held is incompatible with the honour or dignity of the Bar"
  - s. 109 re conviction of indictable offence
  - Saskatchewan* The Legal Profession Act, R.S.S. 1965 c. 301

- s. 48 "professional misconduct or conduct unbecoming a barrister and solicitor or gross negligence"  
"default in payment of moneys"  
"breach of Act, rule or by-law"
- s. 60 "convicted of an indictable offence"

*England Cordery on Solicitors* (6th, 1968), p. 509:

"... because he has been guilty of an act or omission for which the Solicitors Acts 1957 to 1965 or some other statute prescribes that penalty, or because he has committed an act of misconduct which renders him unfit to be permitted to continue in practice."

(at p. 512): "Misconduct which makes a solicitor unfit to continue in practice may be divided into three kinds: criminal conduct, professional misconduct and unprofessional conduct."

(at p. 514, note (e)): "It has not been thought necessary to distinguish instances of professional misconduct from instances of unprofessional conduct. In both cases the ultimate test is whether the solicitor is or is not fit to remain an officer of the court."

"Is it a personally disgraceful offence or is it not? Ought any respectable solicitor to be called upon to enter into that intimate discourse with (the offender) which is necessary between two solicitors even though they are acting for opposite parties?" per Lord Escher M.R. in *Re Weare* (1893) 2 Q.B. 439 at 446 (C.A.)

"Counsel . . . takes the position that the expressions (unprofessional conduct and professional misconduct) are synonymous . . . I agree . . . that the phrases are often used interchangeably but cannot agree that this is always so . . . Accepting as I do that the terms are not synonymous . . ." per McKay J. in *Re Novak and Law Society* (1973) 31 D.L.R. (3d) 89 at 102 (B.C.S.C.)

- 4. "The law and its institutions change as social conditions change. They must change if they are to preserve, much less advance, the political and social values from which they derive their purposes and their life. This is true of the most important of legal institutions, the profession of law. The profession, too, must change when conditions change in order to preserve and advance the social values that are its reason for being." Cheatham, *Availability of Legal Services: The Responsibility of the Individual Lawyer and the Organized Bar* (1965) 12 U.C.L.A.L. Rev. 438, 440.
- 5. "It is not possible to frame a set of rules which will particularize all the duties of the lawyer in all the varied relations of his professional life . . ." Sask. Preamble.

## CHAPTER II

### Competence and Quality of Service

#### **RULE**

(a) The lawyer owes a duty to his client to be competent to perform the legal services which the lawyer undertakes on his behalf.<sup>1</sup>

(b) The lawyer should serve his client in a conscientious, diligent and efficient manner and he should provide a quality of service at least equal to that which lawyers generally would expect of a competent lawyer in a like situation.<sup>2</sup>

#### *Commentary*

1. Competence in the context of the first branch of this Rule goes beyond formal qualification of the lawyer to practise law. It has to do with the sufficiency of the lawyer's qualification to deal with the matter in question and includes knowledge and skill and the ability to use them effectively in the interests of the client.<sup>3</sup>

2. As a member of the legal profession, the lawyer holds himself out as knowledgeable, skilled and capable in the practice of law. Accordingly his client is entitled to assume that he has the ability and capacity to deal adequately with the legal matters which he undertakes on the client's behalf.<sup>4</sup>

3. It follows that the lawyer should not undertake a matter unless he honestly believes that he is competent to handle it or that he can become competent without undue delay, risk or expense to his client. If the lawyer proceeds on any other basis he is not being honest with his client. This is an ethical consideration and is to be distinguished from the standard of care which a court would invoke for purposes of determining negligence.

4. Competence in a particular matter involves more than an understanding of the relevant legal principles: it involves an adequate knowledge of the practices and procedures by which such principles can be effectively applied. The lawyer should keep abreast of developments in the branches of law wherein his practice lies.

5. The lawyer must be alert to recognize his lack of competence for a particular task and the disservice he would do his client if he undertook that task. If he is consulted in such circumstances he should either decline to act or obtain his client's instructions to retain, consult or collaborate with a lawyer who is competent in that field. The lawyer should also recognize that competence for a particular task may require that he seek advice from or collaborate with experts in scientific, accounting or other non-legal fields, and he should not hesitate to seek his client's instructions to consult experts in such a situation.

6. Numerous examples could be given of conduct which does not meet the quality of service required by the second branch of the Rule. The list which follows is illustrative but not by any means exhaustive:

- (a) failure to keep the client reasonably informed;
- (b) failure to answer reasonable requests from the client for information;

- (c) unexplained failure to respond to the client's telephone calls;
- (d) failure to keep appointments with clients without explanation or apology;
- (e) informing the client that something will happen or that some step will be taken by a certain date, then letting the date pass without follow-up information or explanation;
- (f) failure to answer within a reasonable time a communication that requires a reply;
- (g) doing the work in hand but doing it so belatedly that its value to the client is diminished or lost;
- (h) slipshod work, such as mistakes or omissions in statements or documents prepared on behalf of the client;
- (i) failure to maintain office staff and facilities adequate to the lawyer's practice;
- (j) failure to inform the client or to explain properly proposals of settlement;
- (k) withholding information from the client or misleading the client as to the position of the matter to cover up the fact of neglect or mistakes;
- (l) failure to make a prompt and complete report when the work is finished, or, where a final report cannot be made, failure to make an interim report where one might reasonably be expected;
- (m) self-induced disability, for example from intoxicants or drugs, which interferes with or prejudices the lawyer's services to the client.<sup>5</sup>

7. The Rule calls for conscientious, diligent and efficient service on the lawyer's part and he is therefore obliged to do his best to provide prompt service to his client. If and when the lawyer can reasonably foresee that his advice or services will be unduly delayed he should inform his client.<sup>6</sup>

8. It will be noted that the Rule does not provide a standard of perfection. A mistake even though it might be actionable for damages in negligence would not necessarily constitute a failure to maintain the standard set by the Rule, but evidence of gross neglect in a particular matter or a pattern of neglect or mistake in different matters may be evidence of such a failure regardless of tort liability. In the result, where both negligence and incompetence are established damages may be awarded for the former and the latter can give rise to the additional sanction of disciplinary action.<sup>7</sup>

9. The lawyer who is incompetent does his client a disservice, brings discredit on his profession and may bring the administration of justice into disrepute.<sup>8</sup> In addition, he damages his own reputation and practice and may injure those who are associated with or dependent upon him.

#### NOTES

1. Cf. IBA B-1; ABA Canon 6, ECs 6-1 to 6-5, DR 6-101(A).  
"The public looks for a hallmark bestowed by a trusted professional body, and evidenced by entry on a register or members' list. (p. 36) . . . Having bestowed a hallmark of competence, a professional institute has some responsibility for ensuring that it remains valid." (p. 48) *Bennion*.  
See also Bastedo, *A Note on Lawyers' Malpractice*, (1970) 7 Osg. Hall L.J. 311.
2. As a matter of law the English and Canadian courts have consistently held that actions by clients against their lawyers for breach of duty stem from the contracts of employment made or implicit on retainer.



or from the fiduciary relationship that exists between lawyer and client, and not on any general "tort" basis. A contractual or fiduciary relationship must be established. See, e.g. *Groom v. Crocker et al.* (1938) 2 All E.R. 394 (C.A.), *Rowswell v. Pettit et al.* (1968) 68 D.L.R. (2d) 202 (Ont. H.C.) at pp. 209-12 (affd. with variations as to damages by S.C.C. sub nom. *Wilson et al. v. Rowswell* (1970) S.C.R. 865.)

3. "Incompetence goes wider than lack of professional skill, and covers delay, neglect and even sheer disobedience to the client's instructions." *Bennion*, p. 53.
4. "This solicitor's very presence as a lawyer . . . is an assurance to the public that he has the training, the talent and the diligence to advise them about their legal rights and competently to aid in their enforcement. Having regard to the faith which a citizen ought to be able to place in a member of the Law Society . . ." per Porter J.A. in *Cook v. Szott et al.* (1968) 68 D.L.R. (2d) 723 at 726 (Alta. App. Div.).
5. Cf. *Orkin*, pp. 123-25, and para. 9, *post*.  
 "A client has a right to honest explanations for delay on the part of his solicitor, and it is clear that the Benchers . . . concluded that the solicitor had not given an honest explanation for the delay, but on the contrary had deceived his client as to the reason for such delay . . ." per Farris C.J.S.C. in *Re Legal Professions Act; Sandberg v. "F"* (1945) 4 D.L.R. 446 at 447 (B.C. Visitation Tribunal).  
 Cf. IBA D-1. In some jurisdictions (e.g. Ontario, "Law Society Act" R.S.O. 1970 c. 238 s. 35) provision is made for inquiry and suspension of members incapacitated by reason of age, physical or mental illness including addiction to alcohol or drugs, or other cause.
6. For a denunciation of dilatory practices of solicitors with observations *re*, see *Allen v. McAlpine et al.* (1968) 2 W.L.R. 366 (C.A.).
7. "I take the law as to the standard of care of a solicitor to be accurately stated in Charlesworth on Negligence . . . it must be shown that the error or ignorance was such that an ordinarily competent solicitor would not have made or shown it." per LeBel J. in *Aaroe & Aaroe v. Seymour* (1957) 6 D.L.R. (2d) 100 at 101 (Ont. H.C.).  
 ". . . as a future guide to Benchers (this Visitation Tribunal) expresses the opinion that the words "good cause" in the *Legal Professions Act* are broad enough . . . to justify the Benchers in suspending a member . . . who has been guilty of a series of acts of gross negligence, which, taken together, would amount to a course of conduct sufficient to bring the legal profession into disrepute." per Farris C.J.S.C. in *Re Legal Professions Act; Baron v. "F"* (1945) 4 D.L.R. 525 at 528. (B.C. Visitation Tribunal).
8. For an instance of "inordinate and inexcusable delay" see *Tiesmaki v. Wilson* (1972) 23 D.L.R. (3d) 179 per Johnson J.A. at 182 (Alta. App. Div.).

## CHAPTER III

### Advising Clients

#### **RULE**

The lawyer must be both candid and honest when advising his client.<sup>1</sup>

#### *Commentary*

1. The lawyer's duty to the client who seeks legal advice from him is to give the client a competent opinion based on a sufficient knowledge of the relevant facts, an adequate consideration of the applicable law and the lawyer's own experience and expertise. The advice must be open and undisguised and must clearly disclose what the lawyer honestly thinks as to the merits and probable results.<sup>2</sup>

2. Whenever it becomes apparent that the client has misunderstood or misconceived his position or what is really involved, the lawyer should explain as well as advise, so that the client is apprised of his true position and fairly advised with respect to the real issues or questions involved.<sup>3</sup>

3. The lawyer should clearly indicate upon what facts, circumstances and assumptions his opinion or advice is based, e.g. in cases where the circumstances do not justify an exhaustive investigation with the consequent expense to the client. However, unless the client instructs him otherwise, the lawyer should investigate the matter in sufficient detail to enable him to express an opinion rather than mere comments with many qualifications.

4. The lawyer should be wary of bold and confident assurances to his client, especially when his employment may depend upon his advising in a particular way.<sup>4</sup>

5. The lawyer should advise and encourage his client to compromise or settle a dispute whenever it is possible to do so on a reasonable basis and he should discourage his client from commencing useless legal proceedings.<sup>5</sup>

6. When advising his client the lawyer must never knowingly assist or encourage any dishonesty, fraud, crime or illegal conduct or instruct his client as to how to violate the law and avoid punishment. He should be on his guard against becoming the tool or dupe of an unscrupulous client or those who are associated with that client.<sup>6</sup>

7. A bona fide test case is not necessarily precluded by the preceding paragraph and so long as no injury to the person or violence is involved it is not improper for the lawyer to advise and represent a client who in good faith and on reasonable grounds desires to challenge or test a law and the test can most effectively be made by means of a technical breach giving rise to a test case.<sup>7</sup>

8. Apart altogether from the substantive law on the subject, it is improper for the lawyer to advise, threaten or bring a criminal or quasi-criminal prosecution in order to secure some civil advantage for his client or to advise, seek or procure the withdrawal of a prosecution in consideration of the payment of money or transfer of property to or for the benefit of his client.<sup>8</sup>

9. In addition to his opinion as to the legal questions, the lawyer may be asked for or may be expected to give his views as

to non-legal matters such as the business, policy or social implications involved in the question or as to the course the client should choose. In many instances the lawyer's experience will be such that his views on non-legal matters will be of real benefit to his client. If the lawyer does express views on such matters, he should, where and to the extent necessary, point out that he lacks experience or other qualification in the particular field and he should clearly distinguish his legal advice from such other advice.<sup>9</sup>

10. The duty to give honest and candid advice requires the lawyer to inform the client promptly when the lawyer discovers that a mistake, which is or may be damaging to the client and which cannot readily be rectified, has been made in connection with a matter for which he is responsible. When so informing his client, the lawyer should be careful not to prejudice any rights of indemnity which he or his client may have under any insurance, client's protection or indemnity plan, or otherwise. At the same time the lawyer should recommend that his client obtain legal advice elsewhere as to any rights he may have arising from such mistake. The lawyer should also give prompt notice of any potential claim to his insurer or other indemnitor so that the client's protection from that source will not be prejudiced and, unless the client objects, assist and cooperate with the insurer or other indemnitor to the extent necessary to enable any claim which is made to be dealt with promptly. If the lawyer is not so indemnified, or to the extent that his indemnity may not fully cover the claim, he should expeditiously deal with any claim which may be made against him and he must not, under any circumstances, take any unfair advantage that would defeat or impair his client's claim. In cases where liability is clear and the insurer or other indemnitor is prepared to pay its portion of the claim, the lawyer is under a duty to arrange for payment of the balance.<sup>10</sup>

## NOTES

1. Cf. CBA 3(1); Que. 47(1)(3); IBA A-10; *Orkin* at pp. 78-79.
2. The lawyer should not remain silent when it is plain that his client is rushing into an "unwise, not to say disastrous adventure." See per Lord Danckwerts in *Neushal v. Mellish & Harkavy* (1967) 111 Sol. Jo. 399 (C.A.).
3. For cases illustrating the extent to which a lawyer should investigate and verify facts and premises before advising see, e.g., those collected in 43 E. & E.D. (Repl.) at pp. 97-115.
4. Cf. CBA 3(1) and Eaton, *Practicing Ethics* (1966) 9 Can. B.J. 349.
5. Cf. CBA 3(3) and *Orkin* at pp. 95-97. N.B. C-3: "The lawyer has a duty to discourage a client from commencing useless litigation; but the lawyer is not the judge of his client's case and if there is a reasonable prospect of success the lawyer is justified in proceeding to trial. To avoid needless expense it is the lawyer's duty to investigate and evaluate the proofs or evidence upon which the client relies *before* the institution of proceedings. Similarly, when possible the lawyer must encourage the client to compromise or settle the dispute."  
"(the litigation process) operates to bring about a voluntary settlement of a large proportion of disputes . . . This fact of voluntary settlement is an essential feature of the judicial system." Jackett (C.J.F.C.C.), *The Federal Court of Canada, A Manual of Practice* (1971) at pp. 41-42.
6. Cf. CBA 3(5) ". . . the great trust of the lawyer is to be performed within and not without the bounds of the law." See also ABA DR 7-102(A).  
Any complicity such as "abetting", "counselling" or being an "accessory" to a crime or fraud is obviously precluded.  
Cf. ABA I.Cs 7-3 and 7-5: "Where the bounds of law are uncertain . . . the two roles (of advocate and adviser) are essentially different.

In asserting a position on behalf of his client, an *advocate* for the most part *deals with past conduct* and must take the facts as he finds them. By contrast a lawyer serving as *adviser* primarily *assists* his client in *determining the course of future conduct* and relationships . . . . A lawyer should never encourage or aid his client to commit criminal acts or counsel his client on how to violate the law and avoid punishment . . . ." (Emphasis added).

"The aims which (the lawyer) wields are to be the aims of the warrior and not of the assassin. It is his duty to accomplish the interests of his clients *per fas*, but not *per nefas*." per Cockburn L.C.J. in a speech in 1864 quoted as being derived from Quintilian in Rogers, *The Ethics of Advocacy* (1899) 15 L.Q.R. 259 at 270-71. Applied to a solicitor in a "very clear case where the solicitor has been guilty of misconduct" and is "floundering in a quagmire of ignorance and moral obliquity" (he having pending trial of an action, in anticipation of an adverse outcome, advised his client to dispose of its property and, after verdict, taken an assignment of part of that property). *Centre Star v. Rossland Miners Union* (1904-05) 11 B.C.R. 194 at 202-03 (B.C. Full Ct.).

7. For example, to challenge the jurisdiction for or the applicability of a shop-closing by-law or a licencing measure, or to determine the rights of a class or group having some common interest.
8. See article, *Criminal Law May Not Be Used to Collect Civil Debts* (1968) vol. II No. 4 Law Soc. U.C. Gaz. 36. And cf. B.C. E-5; Alta 41; ABA DR 7-105(A).
9. Epitome from Johnstone & Hopson, *Lawyers and Their Work* (1967), Bobbs-Merrill, Indianapolis (a U.K.-U.S. comparison), pp. 78-81: The lawyer's advice is usually largely based on his conception of relevant legal doctrine and its bearing on the particular factual situation at hand. Anticipated reactions of courts, probative value of evidence, desires and resources of clients, and alternative courses of action are likely to have been considered and referred to. He may indicate his preference and argue persuasively, or pose available alternatives in neutral terms. He makes the law and legal processes meaningful to clients; he explains legal doctrine and practices and their implications; he interprets both doctrine and impact. Often legal and nonlegal issues are intertwined. Much turns on whether the client wants a servant, a critic, a sounding board, a neutral evaluator of ideas, reassurance, authority to strengthen his hand . . . . The real problem may be one, not of role conflict, but of role definition. The lawyer may spot problems of which the client is unaware and call them to his attention.
10. See Bastedo, *A Note on Lawyers' Malpractice* (1970) 7 Osg. Hall L.J. 311.

## CHAPTER XIV

### Responsibility to the Profession Generally

#### RULE

The lawyer should assist in maintaining the integrity of the profession and should participate in its activities.<sup>1</sup>

#### *Commentary*

1. Unless a lawyer who tends to depart from proper professional conduct is checked at an early stage, loss or damage to his clients or others may ensue. Evidence of minor breaches may on investigation disclose a more serious situation or may indicate the commencement of a course of conduct which would lead to serious breaches in the future. It is therefore proper (unless it be privileged or otherwise unlawful) for a lawyer to report to his Governing Body any instance involving or appearing to involve a breach of this Code. Where, however, there is a reasonable likelihood that someone will suffer serious damage as a consequence of an apparent breach, for example where a shortage of trust funds is involved, the lawyer has an obligation to the profession to report the matter unless it is privileged or otherwise unlawful for him to do so. In all cases the report must be made bona fide without malice or ulterior motive.<sup>2</sup>
2. The lawyer has a duty to reply promptly to any communication from his Governing Body.<sup>3</sup>
3. The lawyer should not write, in the course of his practice, letters, whether to his client, another lawyer or any other person, which are abusive, offensive or otherwise totally inconsistent with the proper tone of a professional communication from a lawyer.<sup>4</sup>
4. There should be no discrimination by the lawyer on the grounds of race, creed, colour, national origin or sex in the employment of other lawyers or articled students or in other relations between him or her and other members of the profession.<sup>5</sup>
5. In order to enable the profession to discharge its public responsibility to provide independent and competent legal services, the individual lawyer should do his part in assisting the profession to function properly and effectively. In this regard, participation in such activities as law reform, continuing legal education, tutorials, legal aid programmes, community legal service, professional conduct and discipline, liaison with other professions, and other activities of the Governing Body or local, provincial or national associations, although often time-consuming and without tangible reward, are essential to the maintenance of a strong, independent and useful profession.<sup>6</sup>

#### NOTES

1. Cf. CBA 5(1); Que. 29(1); ABA Canon 1.  
"The legal profession . . . has emerged over the centuries in order to fill a pressing public need for protection . . . under the law of the rights and liberties of the individual, however humble, if necessary against the state itself." (IBA, Introductory).  
"Public confidence in the profession would be shaken if such conduct were tolerated . . . no solicitor could escape (striking-off) simply by showing that there had been no dishonesty and no concealment, and that no client had suffered . . ." per Parker L.C.J. in *In re a Solicitor* (1959) 193 Sol. Jour. 875 (Q.B.D.).



2. Cf. CBA 5(1); Que. 36(2); Ont. 33; B.C. F-3; ABA DR 1-103, EC 1-4. Alta. 22: "It is conduct unbecoming . . . not to (report instances) when they clearly involve a shortage of trust funds or a breach of an undertaking."
3. Cf. Que. 41, 42; Ont. 20; Alta. 18; N.B. D-1; Sask. 12. "The reprehensible thing about the solicitor's conduct is his indefensible ignoring of the communications of the Law Society . . ." per Walsh J. in *In re X., a Solicitor* (1920) 16 Alta. L.R. 542 at 543.
4. Cf. IBA D-6.
5. Reflecting the public policy declared by the *Canadian Bill of Rights* and the similar legislation of the various provinces. See Ont. 36, enacted in 1974.
6. Cf. ABA EC 1-4, 2-25, 6-2, 8-1, 8-2, 8-3, 8-9, 9-6.

APPENDIX II - ACCOUNTING - I.C.A.O.

The Chartered Accountants Act, R.S.O. 1937, c. 235

- 8**  
**By-laws**
- (1) The council may from time to time pass by-laws to carry out the objects of the Institute and, without limiting the generality of the foregoing, the council may from time to time pass by-laws,
- (a) to prescribe standards and tests of competency, fitness and moral character, for the registration of students-in-accounts and for membership in the Institute;
  - (b) to prescribe fees payable to the Institute;
  - (c) to provide for the establishment and maintenance of classes, lectures, courses of study, systems of training, periods of service and examinations;
  - (d) to provide for the receipt, management and investment of contributions, donations and bequests from members and others for the benefit of needy members, their families and the families of deceased members or for scholarships and prizes and for contributions from the funds of the Institute for these purposes;
  - (e) to provide for the exercise of disciplinary authority over members and students-in-accounts of the Institute by expulsion, suspension or the imposition of any other penalty after due inquiry;
  - (f) to provide for rules of professional conduct;
  - (g) to provide for affiliation with any university or college or with any corporation or association having similar or related objects. R.S.O. 1937, c. 235, ss. 2(2), 9, 12, 18, *amended*.
- Idem**
- (2) No such by-law or any amendment thereto shall take effect until it has been approved at an annual meeting of the members of the Institute or at a general meeting of the members of the Institute called to consider such by-law or amendment.
- Annulment**
- (3) Any such by-law may be annulled by the Lieutenant-Governor in Council. R.S.O. 1937, c. 235, s. 8 (1, 2).

Institute of Chartered Accountants of Ontario  
By-laws.

- 16 (1) Upon receipt by the council of the proof provided for under clause (2) any member who

(a) becomes a bankrupt, or

(b) is declared by a Court to be a mentally incompetent person pursuant to the *Mental Incompetency Act*, R.S.O. 1970, c. 271, or other statute for the time being in force, or has been certified incompetent to manage his estate or has appointed the Public Trustee as committee of his estate pursuant to the *Mental Health Act*, R.S.O. 1970, c. 269, or other statute for the time being in force, or

(c) is admitted as or becomes an involuntary patient in a psychiatric facility or continues therein by virtue of a certificate of renewal, pursuant to the *Mental Health Act*, R.S.O. 1970, c. 269, or other statute for the time being in force,

is thereupon suspended from membership in the Institute.

- (2) For the purposes of clause (1), the following may be given as conclusive proof of the facts certified, evidenced or declared:

(a) in the case of a bankrupt, a certified copy of the receiving order or a certificate of the official receiver certifying that the person is a bankrupt;

(b) in the case of a mentally incompetent person a certified copy of the final court order declaring the person to be mentally incompetent or in the case of a person certificated to be incompetent to manage his estate a certified copy of such certificate of incompetence or other written evidence from the Public Trustee as his statutory or appointed committee that the person is incompetent to manage his estate;

(c) in the case of a person who is an involuntary patient in a psychiatric facility, written evidence from an appropriate authorized individual in such psychiatric facility stating that the person has been involuntarily admitted to or has become an involuntary patient in the psychiatric facility or continues therein as an involuntary patient.

- (3) Any person suspended by operation of clause (1) shall forthwith be given written notice of such suspension and in the case of a person to whom clause (1)(b) or (c) applies, similar notice shall also be given to that person's legal representative, if any.

(4) Any person whose membership is suspended by operation of clause (1), may, whether or not the condition giving rise to the suspension has been removed, apply to have the suspension terminated; any such application shall be investigated by the professional conduct committee and, after investigation, the professional conduct committee shall, subject to clause 5 hereof, report its findings to the council concerning the matter.

(5) A person applying pursuant to clause (4) hereof, shall be given prompt written notice of the findings of the professional conduct committee, and in the case of a person to whom clause (1)(b) or (c) applies, similar notice shall also be given to that person's legal representative if any; if such person is not satisfied with the findings he may apply to have the matter reviewed by the appeal committee, before the findings are laid before the council, pursuant to By-law 57.

(6) In arriving at its findings the professional conduct committee, or in reviewing any findings the appeal committee, shall have regard to such considerations as may seem appropriate including whether the applicant,

(a) is of good moral character, and

(b) has been discharged from bankruptcy as evidenced by a Court order to that effect, or

(c) has been declared by a court to have become mentally incompetent or capable of managing his own affairs as evidenced by a court order to that effect or has become competent to manage his estate as evidenced by Notice of Cancellation of the Certificate of Incompetence pursuant to the *Mental Health Act*, R.S.O. 1970, c. 269 or other statute for the time being in force, or written evidence to that effect from the Public Trustee, as may be appropriate, or

(d) has sufficiently recovered and has been discharged from a psychiatric facility as evidenced by a certificate or other written evidence to that effect from an appropriate authorized individual in such psychiatric facility.

(7) Any member or student who becomes bankrupt shall advise the Institute of the fact as soon as practicable, but no later than ten days after the event."

**51** \* (1) The council may from time to time appoint such committees from the members as it may deem necessary or desirable and subject to these by-laws may in particular cases appoint non-members to committees provided that at all times a majority of the members and the chairman of any committee shall be members of the Institute.

(2) The president, the vice-president (or vice-presidents), the secretary and the treasurer (or secretary-treasurer) shall be ex officio members of all committees of the Institute, except the professional conduct committee, the discipline committee, the appeal committee, local committees or associations and such other committees as the council may from time to time determine.

(3) Except where otherwise specially provided, meetings of committees shall be held, on reasonable notice, at such times and places as the respective chairmen thereof shall from time to time determine.

\* (4) Except where otherwise specially provided, at any meeting of a committee three members of the committee shall constitute a quorum provided that at any such meeting a majority of the members of the committee present and voting shall be members of the Institute.

\* (5) Subject to clause (4) hereof, every member of a committee present shall have a vote and the chairman shall in addition have a casting vote.

**52\*** Subject to these by-laws, the council annually shall select and appoint the members of the following committees:

- (a) the applications committee;
- (b) the education committee;
- (c) the professional conduct committee;
- (d) the discipline committee;
- (e) the appeal committee.

**55** The professional conduct committee shall be responsible for the supervision and regulation of the professional conduct and good standing of all members and students and shall have the powers in disciplinary matters set forth in By-law 79; ~~the committee shall have power also to act on behalf of the council in investigating any application for termination of a suspension under By-law 16.~~

**56** The discipline committee shall conduct the formal hearing of all charges referred or addressed to it under these by-laws.

**57** (1) The appeal committee shall;

(a) hear any appeals from findings and orders of the discipline committee under these by-laws;

(b) act on behalf of the council in reviewing any findings on an application for admission to membership, under By-law 53 (1) (b), where notice requesting review of such findings has been given pursuant to clause (2) hereof;

(c) act on behalf of the council in reviewing any findings on an application for termination of a suspension, under By-law 16, where notice requesting review has been given pursuant to clause (2) hereof;

and shall report its decision in any such matter, promptly to the council.

(2) In connection with any review proceeding before the appeal committee under clause (1) (b) or (c) hereof, the following provisions shall apply;

(a) written notice requesting review shall be given by the party affected by registered mail addressed to the Office of the Institute in Toronto within ten days of the date of the mailing of the notice of the findings concerned;

(b) the procedural rules set forth in By-laws 87 (b), (d), (e), (f), (g), (h), (l), (t), (u), (w), (x), (y), (aa), (ab), (ac), 88 and 90, shall apply *mutatis mutandis* to such proceedings and shall be read and construed accordingly, and the proceedings shall be recorded in shorthand or otherwise;

(c) notwithstanding any other provision of these by-laws, but subject always to the provisions of *The Statutory Powers Procedure Act*, 1971 and of *The Chartered Accountants Act*, 1956, the appeal committee may, in particular cases, proceed in such manner and make such dispositions as the nature of the case and natural justice may require;

(d) where the good character, propriety of conduct or competence of the party affected is in issue in the review proceedings, the professional conduct committee or the applications committee, as the case may be, shall furnish him with reasonable information of any allegations with respect thereto prior to the hearing;

(e) the appeal committee shall send forthwith to the party affected by first class mail addressed to such person at his address last known to it, a copy of its disposition in the review proceedings, together with the reasons therefor, where reasons have been given."



**57** The appeal committee shall hear any appeals from findings and orders of the discipline committee under these by-laws.

**76** (1) The council may from time to time pass rules of professional conduct prescribing the standards of fitness, moral character and conduct of members and students, but no such rule or any amendment thereto shall take effect until it has been approved at an annual general meeting of the Institute or at a general meeting of the Institute called to consider such rule or amendment.

(2) Members and students shall comply with such standards as prescribed, and with the by-laws, rules and regulations of the Institute.

(3) Notwithstanding the terms of the rules of professional conduct, the council shall have the additional right and power to determine from time to time in particular cases, what acts, omissions, matters or things constitute unfitness, lack of moral character, or professional or other misconduct in members and students, or constitute violations of the by-laws, rules and regulations of the Institute or are or have been derogatory to the reputation, dignity or honour of the Institute or the profession.

**77** The disciplinary work of the Institute shall be carried on by the professional conduct committee, the discipline committee, the appeal committee and the council in accordance with the by-laws, provided that the council may from time to time make rules and regulations for the conduct of the work of these three committees.

#### **Professional Conduct Committee**

**78** The professional conduct committee shall consist of such members, including a chairman and one or more deputy chairmen, as may be appointed by the council; it may sit and effectively act in two or more divisions at the same time provided that notice has been given to its members and that a quorum of three is present in each division.

**79** (1) The professional conduct committee shall be responsible for the initiation of the disciplinary work of the Institute and in the execution of its duties shall have power:

(a) to receive in writing from any person a charge or complaint of professional misconduct by any member or student;

(b) to receive in writing from any member a charge or complaint of unfitness, lack of moral character or professional or other misconduct of any member or student;

(c) to make such preliminary investigation and enquiry as it deems proper into any such charge or complaint or into any act, omission, matter or thing which may constitute or involve unfitness, lack of moral character, or professional or other misconduct in any member or student, or which may constitute or involve violations of the by-laws, rules and regulations of the Institute or which may be or may have been derogatory to the reputation, dignity or honour of the Institute or the profession;

(d) to make a charge in the committee's absolute discretion,

(e) to take whatever action it deems proper in connection with any charge or complaint including referring any such charge to the discipline committee;

\* (f) to require the attendance of any member or student and the production of any books, documents and working or other papers in their possession, custody or control which may be required from time to time;

(g) to retain the services of any person on a fee basis, whether or not a member, to authorize any such person to enquire into all matters which may be brought to his attention by the committee or its chairman, and through its chairman to authorize any such person to inter-

view any member or student and to examine any books, documents and working or other papers;

(h) to determine the time and place of its meetings and the procedure thereat and from time to time to do and decide all such other matters as may be necessary for the work of the committee;

(i) to admonish informally members or students whether charged or not under these by-laws.

\* (2) Notwithstanding any other provision of these by-laws the professional conduct committee may appeal against any finding or order made by the discipline committee under by-law 80(4) or by the appeal committee under by-law 82(8).

\* (3) Any appeal pursuant to this by-law shall be commenced by the professional conduct committee giving written notice thereof to the party or parties to the proceedings and filing a copy of such notice with the appeal committee or with the council, as the case may be.

\* (4) Any notice of appeal given under this by-law shall set forth the grounds and purposes of the appeal and shall state what variation, if any, is sought in any finding or order against which the appeal is taken and, except by leave of the body hearing the appeal and upon application duly made in accordance with provisions of these by-laws, no ground of appeal may be put forth and no variation sought at the hearing which is not included in the notice of appeal.

\* (5) The provisions in by-law 80(7); by-law 81; by-law 82(2), (4), (6), (8), (9) and (10); by-law 83(1), (3), (5), (6) and (7); by-law 87(b), (d), (e), (g) to (l) both inclusive, (o), (p), (q), (s), (u), (w) and (z); and by-laws 89 and 90 shall apply *mutatis mutandis* to the professional conduct committee as well as to the person charged in any appeal taken pursuant to this by-law and such provisions shall be read and construed accordingly.

### **Discipline Committee**

**80**

(1) The discipline committee shall consist of such members, including a chairman and one or more deputy chairmen, as may be appointed by the council, of whom three shall constitute a quorum; it may sit and effectively act in two or more divisions at the same time provided that notice has been given to its members and that a quorum of three is present in each division.

(2) In any case where the professional conduct committee refers or makes a charge to the discipline committee, the discipline committee shall promptly give notice of the time appointed for a formal hearing.

(3) The procedure before and at such formal hearing shall be in accordance with the provisions of by-law 87.

(4) If after a formal hearing the discipline committee finds any member or student guilty of a charge, it may order one or more of the following, namely:

(a) that any such member or student shall be reprimanded by the chairman or a deputy chairman of the discipline committee or disciplined in such other way as the committee may from time to time determine;

(b) that any such member or student shall pay a fine to the Institute or, if such fine should not be paid within ten days, that the member or student shall be dealt with under this by-law in such manner, including suspension or expulsion, as the committee may by resolution from time to time determine;

(c) that any such member or student shall be suspended from any or all of his rights and privileges as such under the Act and the by-laws on such terms and conditions as the committee may from time to time determine either for a time certain or until the committee shall further order;

(d) that any such student shall be struck off the register of students;

(e) that any such member shall be expelled from membership in the Institute;

or it may recommend to the council that any such member or student be permitted to resign.

(5) The discipline committee may accept as conclusive proof of the facts certified the following:

(a) in the case of a convicted person the certificate of conviction signed by the Clerk of the Court or other officer having custody of the records in which the conviction was had or returned; and

(b) in the case of the revocation or suspension of a licence under The Public Accountancy Act a certificate of the secretary or the registrar of The Public Accountants Council for the Province of Ontario of any action taken by any lawful authority with regard to a licence.

(6) The discipline committee shall have power during or after a formal hearing to admonish informally members or students whether found guilty or not.

\* (7) (a) The discipline committee shall report forthwith to the professional conduct committee the disposition of every charge referred or made to it.

(b) The discipline committee shall report to the council the disposition of every charge referred or made to it.

**81** (1) Notice of any order made by the discipline committee may be given in such form and manner as the discipline committee may from time to time determine and notice of any order of expulsion or suspension of a member shall be given to all members of the Institute after a period of fifteen days from the date of the making of the order.

(2) Notice of any order made by the discipline committee may, at its discretion, be published in *The Canadian Chartered Accountant* and such publication shall be deemed adequate notice to all members under clause (1) of this by-law.

(3) Such further or other notice of any order made by the discipline committee under by-law 80 may be given or published in such a way and at such times as the discipline committee or the council may determine.

\* (4) The provisions of this by-law shall apply *mutatis mutandis* to notice or publication of any order made by the appeal committee under the provisions of by-law 82 or by the council under the provisions of by-law 83, provided that upon the giving of any notice of appeal or of final appeal or of any notice of a proceeding in a court by way of review or appeal, as the case may be, the terms of any order and the operation of this by-law as to notice and publication shall be stayed pending the disposition of any such appeal or final appeal or proceeding unless otherwise ordered by the appeal committee, the council or a court, as the case may be, in accordance with the provisions of Section 25(1) of *The Statutory Powers Procedure Act, 1971*, or other provision or statute for the time being in force.

(5) All members and students, by their applications for membership or registration or by their continuance of membership or registration, shall consent and be deemed to have consented to any notice or publication under this by-law and by-laws 82 and 83.

#### **Appeal Committee**

**82** (1) The appeal committee shall consist of such members of the council, including a chairman, as may be appointed by the council.

(2) Any member or student found guilty of any charge by the discipline committee may appeal against any finding or any order under by-law 80(4) by giving written notice of appeal to the appeal committee by registered letter addressed to the office of the Institute in Toronto and by filing a bond satisfactory to the chairman of the appeal committee not later than ten days from the date of the making of any such finding or order, excluding such date but including the day of mailing, and

unless notice of appeal is given and the bond filed as required by this by-law, the findings and orders of the discipline committee in any particular case shall be final, binding and conclusive for all purposes.

(3) Any notice of appeal given under the provisions of this by-law shall, in the manner required by the provisions of by-law 87(n), set forth the grounds of appeal and shall state the relief asked.

(4) When a notice of appeal is duly given, the appeal committee shall promptly give notice of the time appointed for a hearing of the appeal.

(5) *Repealed, June 12, 1972.*

(6) If, at the time appointed for the hearing of any appeal, the person appealing appears, the appeal committee shall proceed on the basis set forth in the notice of appeal.

(7) The procedure before and at any appeal under this by-law shall be in accordance with the provisions of by-law 87.

(8) The appeal committee shall have power by order to confirm, reject or change the findings and any orders of the discipline committee made under these by-laws including those relating to publication.

(9) The findings and orders of the appeal committee in any particular case shall be final, binding and conclusive for all purposes unless a final appeal to the council is provided for in these by-laws and is taken.

\* (10) The appeal committee shall report forthwith to the professional conduct committee the disposition of every appeal taken to it.

#### **Council — Final Appeal**

**83**

(1) In every case where the appeal committee confirms or makes an order suspending a member or student or striking a student from the register or expelling a member, the person thus suspended, struck from the register or expelled may appeal against such order and the finding on which it is based by giving written notice of final appeal to the council by registered letter addressed to the office of the Institute in Toronto and by filing a second bond satisfactory to the president, not later than ten days from the date of the making of the order of the appeal committee, excluding such date but including the day of mailing.

(2) Any notice of final appeal given under the provisions of this by-law shall, in the manner required by the provisions of by-law 87(n), set forth the grounds of final appeal and shall state the relief asked.

(3) When notice of final appeal is duly given, the president shall convene a special meeting of the council to hear the final appeal and the Institute shall promptly give notice of the time appointed for such hearing.

(4) *Repealed, June 12, 1972.*

(5) If, at the time appointed for the hearing of the final appeal, the person appealing appears, the council shall either hear the appeal on the basis set forth in the notice of final appeal or, in its discretion, proceed by way of a new formal hearing provided there is a request to do so in the notice of final appeal.

(6) In any final appeal, the council shall have power to confirm, reject or change the findings and orders of the discipline committee and the appeal committee and to make any order which, in its discretion, the nature of the case or natural justice may require.

(7) The decisions, findings and orders of the council in any final appeal shall be final, binding and conclusive for all purposes.

**87\***

In connection with any formal hearing by the discipline committee or with any appeal to or other hearing by the appeal committee or the council, the following rules of procedure shall apply:

(a) any person charged shall be entitled to ten days notice of the time and place appointed for any formal hearing of the charge (excluding the day of mailing and the day of hearing) together with a copy of the charge, addressed to him at his last known address shown in the records of the Institute;

(b) any person appealing to the appeal committee or to the council shall be entitled to ten days notice of the time and place appointed for the hearing of the appeal or of the final appeal (excluding the day of



mailing and the day of hearing) addressed to him at his last known address shown in the records of the Institute;

(c) in any case where the appeal committee or the council proceeds by way of a new formal hearing, no further notice of the new formal hearing shall be required and the appeal committee or the council may thereupon proceed with such hearing;

(d) any person charged or appealing shall attend at the time and place appointed for the hearing of the charge or of the appeal; if the person charged or appealing does not attend the formal hearing, the appeal or the final appeal, the discipline committee or the appeal committee or the council, as the case may be, may proceed in his absence and he will not be entitled to any further notice in the proceedings;

(e) at any formal hearing of a charge, the person charged shall be entitled to be represented by legal counsel or other agent, to be present during the hearing, to question any witnesses either personally, by counsel or such other agent, and to submit statements, evidence and argument; and at any appeal or final appeal, not involving a new formal hearing, any person appealing shall be entitled to be represented by legal counsel or other agent, to be present during the hearing and to submit argument;

(f) the discipline committee, the appeal committee or the council may require the attendance before it of any member or student and the production of any books, documents and working or other papers;

(g) unless it be otherwise specially provided, the procedure at all formal hearings and appeals shall be determined by the ruling of the chairman, whose decision shall be final, binding and conclusive;

(h) a formal hearing or the hearing of any appeal may be adjourned at any time and from time to time and no further notice shall be required;

(i) the proceedings at any formal hearing or at any appeal from which a final appeal may be taken shall be recorded in shorthand or otherwise and where an appeal or final appeal is taken under the by-laws the party appealing shall, subject to clause (j) hereof, request, pay for and file a complete transcript of the proceedings, and that transcript shall be conclusive evidence of the proceedings for the purposes of the appeal or final appeal;

(j) in any appeal or final appeal, and upon application made on notice to all parties not later than 15 days from the date of the filing of the notice of appeal or of final appeal, the chairman of the appeal committee or of the council as the case may be, may, in his absolute discretion, dispense with the requirement of filing a complete transcript as provided in clause (i) hereof and may order instead that the party appealing file only those portions of the transcript as bear upon the grounds set forth in the notice of appeal or notice of final appeal;

(k) if more than one member or student be involved in any charge or if there be more than one charge, the formal hearing or appeal may proceed as to each charge or member or student separately or together as the chairman may from time to time determine;

(l) in any formal hearing the discipline committee, the appeal committee or the council, as the case may be, may administer oaths and affirmations for the purpose of any of its proceedings and may require evidence before it to be given under oath or affirmation;

(m) the discipline committee, the appeal committee and the council, as the case may be, shall have power to charge the costs of any formal hearing, appeal or final appeal to the member or student;

(n) any notice of appeal or final appeal given under the provisions of these by-laws shall set forth the particular grounds of appeal, shall state the particular relief asked and, further, whether the relief asked is

(i) a review of and change in any finding on which the order was based, in which case the finding and the change requested shall be set forth in the notice,



(ii) the setting aside of or a change in the whole or any term of the order and, in the latter case, any such term of the order shall be set forth in the notice,

(iii) a new formal hearing of the whole or a particular aspect of the charge by the body hearing the appeal or final appeal and, in the latter case, any such particular aspect of the charge shall be set forth in the notice,

and, except by leave of the body hearing the appeal or the final appeal and upon application duly made in accordance with the provisions of these by-laws, no ground of appeal may be put forth and no relief may be asked at the hearing which is not included in the notice of appeal or of final appeal;

(o) any notice of appeal or of final appeal may be amended at the hearing with leave of the appeal committee or of the council as the case may be, provided notice of application for amendment setting out the amendment has been given to the office of the Institute at Toronto at least five days prior to the date appointed for the hearing of the appeal or final appeal;

(p) where the body hearing the appeal or final appeal allows an amendment under the foregoing provision of this by-law, any reference in these by-laws to a "notice of appeal" or to a "notice of final appeal" thereafter shall mean the notice of appeal or the notice of final appeal as amended;

(q) notwithstanding any other provision of these by-laws, the appeal committee and the council may, in particular cases, proceed in such manner and grant such relief as the nature of the case or natural justice may require;

(r) where there is a variance between the wording of a charge and the evidence presented in support thereof, and where, in the opinion of the Discipline committee, the member or student has not been prejudiced by lack of notice, the discipline committee may direct an amendment of the charge so as to make it conform to the evidence and proceed with the hearing of the charge, but where, in the opinion of the discipline committee, the member or student may be prejudiced by such amendment, the discipline committee may, if it is of the opinion that such prejudice can be removed by an adjournment, make such amendment and adjourn the hearing of the charge to a later date; this provision shall also apply to a new formal hearing in accordance with the provisions of these by-laws and shall be read and construed accordingly;

(s) the discipline committee, the appeal committee or the council, as the case may be, shall send to the person charged or appealing, by first-class mail addressed to such person at his address last known to it, a copy of its final decision and order, if any, in the proceedings, together with the reasons therefor, where reasons have been given, and such party shall be deemed to have received a copy of the decision or order on the fifth day after the day of mailing unless he did not, acting in good faith, through absence, accident, illness or other cause beyond his control, receive the copy of the decision or order until a later date, and accordingly that the time limited by by-law 81(1) as to notice or publication of any order, and by by-law 82(2) and by-law 83(1) as to the giving of notice of appeal or of any final appeal, shall be deemed to commence on the fifth day following the date of mailing by first-class mail in accordance with the provisions of this paragraph, provided that in lieu of mailing as aforesaid, a copy of the decision or order, if any, together with the reasons therefor, where reasons have been given, may be personally served upon such party and in such cases the time limited by by-law 81(1) as to notice or publication of any order, and by-law 82(2) and by-law 83(1) as to the giving of notice of appeal or of any final appeal, shall commence on the day next following the day on which such personal service is effected;

(t) in any formal hearing the discipline committee, the appeal committee or the council, as the case may be, may require any person,

including the person charged, by summons issued pursuant to Section 12 of *The Statutory Powers Procedure Act, 1971*, or other provision or statute for the time being in force, to give evidence on oath or affirmation at that formal hearing, and to produce in evidence at such hearing the documents and things specified in the summons by the body issuing it, provided that such evidence, documents and things are relevant to the subject matter of the proceedings and are admissible at the formal hearing;

(u) the discipline committee, the appeal committee, or the council, as the case may be, shall give its final decision and order, if any, in any proceedings in writing and shall give reasons in writing therefor if so requested by a party;

(v) where the good character, propriety of conduct or competence of the person charged is in issue in any formal hearing, the professional conduct committee shall furnish such person with reasonable information of any allegations with respect thereto prior to the hearing;

(w) the discipline committee, or the appeal committee or the council, as the case may be, may

(i) make such orders or give such directions in proceedings before it as it considers proper to prevent abuse of its processes,

(ii) reasonably limit further cross-examination of a witness where it is satisfied that the cross-examination of the witness has been sufficient to disclose fully and fairly the facts in relation to which he has given evidence,

(iii) exclude from a hearing anyone, other than a barrister and solicitor qualified to practise in Ontario, appearing as an agent on behalf of a party or as an adviser to a witness if it finds that such person is not competent properly to represent or to advise the party or does not understand and comply at the hearing with the duties and responsibilities of an advocate or adviser,

(iv) make such orders and give such directions as it considers necessary for the maintenance of order and such orders or directions may be enforced in the manner provided in Section 9(2) of *The Statutory Powers Procedure Act, 1971*, or other provision or statute for the time being in force;

(x) in any formal hearing by the discipline committee, the appeal committee or the council, as the case may be:

(i) a witness may be advised by his counsel or agent as to his rights but such counsel or agent may take no other part in such hearing without leave of the body holding such hearing; and

(ii) where such a hearing is *in camera* a counsel or agent for a witness shall not be entitled to be present except when that witness is giving evidence;

(y) in any formal hearing the discipline committee, the appeal committee or the council, as the case may be, may:

(i) to the extent permitted by Section 15 of *The Statutory Powers Procedure Act, 1971*, or other provision or statute for the time being in force, admit as evidence whether or not given or proven under oath or affirmation or admissible as evidence in a court, any oral testimony and any document or other thing relevant to the subject matter of the proceedings and may act on such evidence, but may exclude anything unduly repetitious;

(ii) admit a copy of a document or other thing as evidence where it is satisfied as to the authenticity thereof;

(iii) grant leave to the person producing or to the person entitled to a document that has been filed in evidence to cause, or to itself cause, such document to be photocopied and it may authorize the photocopy to be filed in evidence in the place of the document filed and release the document filed, or may furnish to the person producing

it or the person entitled to it a photocopy of the document filed, certified by a member of the discipline committee, the appeal committee or the council, as the case may be;

(z) a member of the discipline committee who has participated in the hearing of a charge by the discipline committee shall not participate in the hearing of any appeal, final appeal or new formal hearing in the same matter, and a member of the council who has participated in the hearing of an appeal or in a new formal hearing by the appeal committee shall not participate in the hearing of any final appeal or in a further new formal hearing in the same matter;

(aa) the members of the discipline committee, the appeal committee or the council, as the case may be, who are assigned to render a decision after any formal hearing or any appeal shall not have taken part prior to such formal hearing or appeal in any investigation or consideration of the subject matter of such formal hearing or appeal and shall not communicate directly or indirectly in relation to the subject matter of such formal hearing or appeal with any person or with any party or his representative except upon notice to and opportunity for all parties to participate, but such members may seek legal advice from an adviser independent from the parties and in such case the nature of the advice shall be made known to the parties in order that they may make a submission as to the law;

(ab) no member of the discipline committee, the appeal committee or the council, as the case may be, shall participate in a decision pursuant to any formal hearing or appeal who was not present throughout such hearing or appeal and heard the evidence and argument of the parties, and, except with the consent of the parties, no decision pursuant to the hearing shall be reached unless all members so present participate in the decision;

(ac) in any formal hearing the findings of fact shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of *The Statutory Powers Procedure Act, 1971*, or other provision or statute for the time being in force.

- 88\*** The discipline committee, the appeal committee or the council, as the case may be, may, in making its decision in any proceedings,
- (a) take notice of facts that may be judicially noticed; and
  - (b) take notice of any generally recognized scientific or technical facts, information, or opinions within its scientific or specialized knowledge.

- 90\*** Any formal hearing shall be open to the public except where the discipline committee, the appeal committee or the council, as the case may be, is of the opinion that,
- (a) matters involving public security may be disclosed; or
  - (b) intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public,
- in which case the discipline committee, the appeal committee or the council, as the case may be, may hold the hearing concerning such matters *in camera*.

## ICAO Rules of Professional Conduct

The rules of professional conduct, as a whole, flow from the special obligations embraced by the chartered accountant. The reliance of the public, generally, and the business community, in particular, on sound and fair financial reporting and competent advice on business affairs — and the economic importance of that reporting and advice — impose these special obligations on the profession. They also establish, firmly, its social usefulness.

The rules and the related Interpretations of Council centre about a number of principles — fundamental statements of accepted conduct whose soundness is, for the most part, self-evident.

These principles are:

- *A member or student shall conduct himself at all times in a manner which will maintain the good reputation of the profession and its ability to serve the public interest.*
- *A member or student shall perform his professional services with integrity and care and accept an obligation to sustain his professional competence by keeping himself informed of, and complying with, developments in professional standards.*
- *A member who is engaged to express an opinion on financial statements shall hold himself free of any influence, interest or relationship, in respect of his client's affairs, which impairs his professional judgment or objectivity or which, in the view of a reasonable observer, has that effect.*
- *A member or student has a duty of confidence in respect of the affairs of any client and shall not disclose, without proper cause, any information obtained in the course of his duties, nor shall he in any way exploit such information to his advantage.*
- *The development of a member's practice shall be founded upon a reputation for professional excellence, and the use of methods commonly characterized as self-promotion or solicitation is not in keeping with this principle.*
- *A member shall act in relation to any other member with the courtesy and consideration due between professional colleagues and which, in turn, he would wish to be accorded by the other member.*

\* \* \*

A number of the principles need not be expounded upon — those which concern: upholding the honour and good reputation of the profession; the performance of professional services with integrity and care; the duty of confidence; and the duty to act with courtesy and consideration toward professional colleagues.

Some aspects of the principles and of the rules derived from them do, however, warrant discussion:

- the sustaining of professional competence;
- the duty to avoid conflicts of interest in respect of a client's affairs; and
- the development of a practice by establishing a good reputation rather than by self-promotion or solicitation.

It is apparent that the more sophisticated and complex society becomes, the greater the demands it makes of its institutions, including its professions. Society's expectations of the accounting profession — particularly in its financial reporting roles and its business advisory services — will, therefore, continue to rise. This underscores the need, expressed in the statement of principles, for sustaining individual professional competence by keeping abreast of and complying with developments in professional standards.



It makes imperative, too, the duty that the chartered accountant bring, and be seen to bring, the qualities of objectivity and integrity to his professional services. It thus becomes a cardinal position of a member of the profession that he will not subordinate his professional judgment to the will of others, and that he expresses his conclusions honestly and impartially.

In this respect, clearly, chartered accountants cannot practise their profession and participate in the affairs of their community without being exposed to circumstances that may place pressures upon their objectivity and integrity, and it would be impractical to impose detailed proscriptions intended to cover all conceivable situations. To do so on a rigid basis would be to inhibit the rendering of useful services even when the likelihood of impairment of the chartered accountant's objectivity was relatively remote.

While it may be difficult for a chartered accountant always to appear completely free of any disabling influence, interest or relationship in respect of his client's affairs, pressures upon his objectivity or integrity are subject to powerful countervailing forces and restraints — his liability in law, his responsibility to his profession for his professional actions and, perhaps most importantly, the inbred resistance of a disciplined professional person to any infringement upon his basic impartiality and integrity in the rendering of services.

Since, however, the public must be assured of the chartered accountant's freedom from any conflict of interest, the profession tests its existence against the criterion of whether a reasonable man, having knowledge of all the facts and taking into consideration normal strength of character and normal behaviour under the particular circumstances, would conclude that a specified relationship between a chartered accountant and a client posed an unacceptable threat to the chartered accountant's independence of judgment. Only thus can public confidence in the objectivity and integrity of the chartered accountant be sustained, and it is upon this public confidence that the reputation and usefulness of the profession rest.

Turning to the matter of building a practice — strictures against advertising, against publicly claiming special skills above those possessed by colleagues with equal qualifications, and against solicitation for engagements, are readily understood by a member of a profession. He regards these acts, almost instinctively, as the very antithesis of professionalism — a scrambling for clientele inappropriate to an essentially intellectual calling which emphasizes quality of service. So, too, with responding to calls for tenders for engagements. Yet to the critic the appearance is that of "restrictive practices" which are not in the public interest. The onus of proof that these restraints are contrary to the public interest lies with the critic but is not a burden that is usually taken up.

The profession can, however, hypothesize the absence of these rules and, with conviction, take the position that the result would be contrary to the public interest. It would not be in the public interest, for example, that the selection of a practitioner by a client was a function of the skill of the practitioner's advertising agency and the size of his advertising budget; nor that a practitioner could, publicly, claim for himself professional skills exceeding those of similarly qualified practitioners, in a purely subjective fashion and without let, hindrance or reasonable constraint; nor that quality of service in the important realms of rights and property, in which chartered accountants function, should become secondary to price — for example, a public accounting engagement being tailored to a bid price rather than to the needs of the engagement, as they emerge, in the professional judgment of the chartered accountant; nor that self-promotion replace the building of a reputation for professional competence.



It is not an exaggeration to suggest that the rules concerned are basic to a profession and that their removal would lead, in the long run, to downgrading the quality of service given and to the disintegration of the profession. Since the public interest in the quality of services provided by chartered accountants is assumed in the continuing existence and growth of the profession, that interest would not be served by any act which tended to destroy the profession.

### **Definitions**

The definitions in and provisions of the by-laws of the Institute govern these rules, where applicable. Members and students are referred, in particular, to By-law 2 which contains a number of relevant definitions.

### **Application\***

- A member not engaged in the practice of public accounting must observe these rules except where the wording of any rule makes it clear that it relates specifically to the practice of public accounting or there is a specific exception made in a particular rule.
- Where the term "professional services" is used it means, in its application to a member not engaged in the practice of public accounting, those of his activities where the public or his associates are entitled to rely on his membership in the Institute as giving him particular competence.
- A member is responsible to the Institute for compliance with these rules by others associated with him in the public practice of the functions covered by the rules, who are either under his supervision or share with him proprietary interest in the practice, and must not permit others to carry out on his behalf acts which, if he carried them out himself, would place him in violation of the rules.
- A member who is resident outside Canada is expected to abide by the rules of the organized accounting profession in the jurisdiction in which he resides and to ensure that his actions do not bring disrepute upon the Institute.

### **Interpretation**

In interpreting the rules, they are to be read in the light of the Foreword to the Rules of Professional Conduct and of the Interpretations issued by the council from time to time.

## **100 — GENERAL**

- 101** Members and students shall comply with the by-laws, rules and regulations and rules of professional conduct of the Institute as they may be from time to time and with any order or resolution of the council or officers of the Institute under the by-laws.
- 102** Any member or student who has been convicted of any criminal or similar offence may be charged with professional misconduct by the professional conduct committee; in such cases, a certificate of conviction by any competent court shall be sufficient evidence of the conviction and of the commission of the offence.

## **200 — STANDARDS OF CONDUCT AFFECTING THE PUBLIC INTEREST**

- 201** A member or student shall conduct himself at all times in a manner which will maintain the good reputation of the profession and its ability to serve the public interest.
- 202** A member or student shall perform his professional services with integrity and due care.
- 203** A member shall sustain his professional competence by keeping himself informed of, and complying with, developments in professional standards in all functions in which he practises or is relied upon because of his calling.
- 204** A member who is engaged to express an opinion on financial statements shall hold himself free of any influence, interest or relationship, in respect of his client's affairs, which impairs his professional judgment or objectivity or which, in the view of a reasonable observer, has that effect.
- 205** A member or student shall not sign or associate himself with any letter, report, statement, representation or financial statement which he knows, or should know, is false or misleading, whether or not the signing or association is subject to a disclaimer of responsibility.
- 206.1** In expressing an opinion on financial statements examined by him a member shall not
- (1) fail to reveal any material fact known to him which is not disclosed in the financial statements, the omission of which renders the financial statements misleading, nor
  - (2) fail to report any material mis-statement known to him to be contained in the financial statements.
- .2** A member shall not express an opinion on financial statements examined by him
- (1) if he fails to obtain sufficient information to warrant an expression of opinion, or
  - (2) if he has not complied in all material respects with the auditing standards of the profession, or
  - (3) if the exceptions or qualifications to the opinion are sufficiently material to nullify the value of such opinion.
- .3** Subject to item (3) of rule 206.2 a member shall not express an opinion on financial statements examined by him which are not prepared in accordance with the accounting standards of the profession unless such opinion is suitably qualified; without limiting the generality of the foregoing, if a member expresses an opinion without qualification or exception that financial statements are presented in accordance with generally accepted accounting principles and if such statements depart in any material respect from the recommendations of The Accounting and Auditing Research Committee of The Canadian Institute of Chartered Accountants or its successor(s), such departure must be capable of justification as proper in the particular circumstances.
- 207** A member shall inform his client of any business connections, any affiliations, and any interests of which the client might reasonably expect to be informed but this does not necessarily include disclosure of professional services he may be rendering or proposing to render to other clients.

- 208.1** A member or student shall not, in connection with any transaction involving a client, hold, receive, bargain for, become entitled to or acquire any fee, remuneration or benefit without the client's knowledge and consent.
- .2** A member or student shall not, in connection with any transaction involving his employer, hold, receive, bargain for, become entitled to or acquire any fee, remuneration or benefit without the employer's knowledge and consent.
- 209** A member or student shall not take any action, such as acquiring any interest, property or benefit, in connection with which he makes improper use of confidential knowledge of a client's affairs obtained in the course of his duties.
- 210.1** A member or student shall not disclose or use any confidential information concerning the affairs of any client except when properly acting in the course of his duties or when such information is required to be disclosed by order of lawful authority or by the council, the professional conduct committee, the discipline committee or the appeal committee in the proper exercise of their duties.
- .2** A member or student shall not disclose or use any confidential information concerning the affairs of his employer except when properly acting in the course of his duties or when such information is required to be disclosed by order of lawful authority or by the council, the professional conduct committee, the discipline committee or the appeal committee in the proper exercise of their duties.
- 211** Subject to the provisions of Rule 210, a member shall bring to the attention of the professional conduct committee any apparent breach of these rules or any instance involving or appearing to involve doubt as to the competence, reputation or integrity of a member, student or applicant.

## ICAO Interpretations

### CI 202 — INTEGRITY AND DUE CARE

#### **Documentation**

- 1** Cases may arise from time to time where a member may be asked by a court, or by the professional conduct committee, to substantiate procedures carried out in the course of an assignment. If the member's files do not contain sufficient documentation to confirm the nature and extent of the work done, the member concerned may well have great difficulty in showing that proper procedures were in fact carried out. The importance of adequate documentation cannot be over-emphasized; without it, a member's ability to outline and defend his professional work is seriously impaired.

### CI 203 — PROFESSIONAL COMPETENCE

Refer to Rule 206 and CI 206, *Professional Standards*

## **CI 204 — OBJECTIVITY**

- 1 Rule 204 requires that a member engaged to express an opinion on financial statements hold himself free of any influence, interest or relationship, in respect of his client's affairs, which impairs his professional judgment or objectivity or which, in the view of a reasonable observer, has that effect.
- 2 This is one of the principles expressed in the foreword to the rules and the foreword includes some exposition of the reasoning underlying the principle and thus underlying the rule. The "reasonable observer" does not, of course, exist as an individual. The term simply expresses the standard by which impairment, or the possibility of impairment, can be judged. The standard is that of a reasonable man having knowledge of all the facts involved and applying judgment objectively — that is, as an impartial observer.
- 3 To provide guidance for members, the council issues this Interpretation to set out how, in its opinion, a reasonable observer might be expected to view certain situations.

## **CI 205 — FALSE OR MISLEADING STATEMENTS**

### **Application to members not in public practice**

A member who is employed other than in public practice is subject to Rule 205 just as is the member in public practice. It is recognized that under exceptional circumstances, this may place such a member in a difficult position *vis-a-vis* the organization with which he is employed; however, a member fails in his professional duty if he allows himself to be associated with financial statements or other documents which he knows, or should know, are false or misleading.

## **CI 206 — PROFESSIONAL STANDARDS**

### **Auditing standards**

- 1 Rule 206.2 of the Rules of Professional Conduct states, *inter alia*, that no member shall express an opinion on financial statements examined by him if he fails to obtain sufficient information to warrant an expression of opinion.
- 2 The council is of the opinion that it would be useful to members to have before them a statement of certain generally accepted auditing standards which are in addition to those dealt with in the CICA Handbook. Auditing standards relate to the quality of work to be performed and the suitability of the resulting audit report to the objectives of an audit. These are pre-eminently matters of judgment.
- 3 The council considers that the following auditing standards are generally accepted; some of these, while implied in the CICA Handbook, may not be specifically set out therein:
  - a) The examination of the records and underlying data is to be performed by a person or persons having adequate technical training and proficiency in auditing, with due care and with an objective state of mind.
  - b) The work is to be adequately planned and properly executed. If assistants are employed, they are to be adequately supervised.



c) There is to be an organized study and evaluation of internal control as a basis for any reliance thereon in determining the extent of test audit procedures.

d) Sufficient appropriate evidential matter is to be obtained through inspection, observation, enquiry and confirmation to afford a reasonable basis for expressing an opinion on the financial statements.

#### **Accounting standards**

- 4 Rule 206.3: this rule, subject to item (3) of rule 206.2, requires that a member shall not express an opinion on financial statements examined by him which are not prepared in accordance with the accounting standards of the profession unless such opinion is suitably qualified. The rule further provides that, without limiting the generality of the foregoing, if a member expresses an opinion without qualification or exception that financial statements are presented in accordance with generally accepted accounting principles and if such statements depart in any material respect from the recommendations of the Accounting and Auditing Research Committee of the Canadian Institute of Chartered Accountants or its successor(s) (herein collectively referred to as the Research Committee), such departure must be capable of justification as proper in the particular circumstances.
- 5 As the term "accounting *standards* of the profession" and reference to the recommendations of the Research Committee are appearing in the rules of professional conduct for the first time, council issues this Interpretation to provide guidance for members. While the term "accounting *principles*" is widely used and is embodied in statute law, it does present difficulties. Sometimes it is held to refer only to broad general principles, while at other times its meaning has been extended to cover practices *as well as* principles.
- 6 Where the term "accounting *standards* of the profession" is used in the rule it expresses this wider meaning, i.e., that body of principles *and practices* which have been generally adopted by the profession and which are applied in the preparation of financial statements, taken together with the requirements of any governing act, such as The Business Corporations Act and The Securities Act (subject to the comment in 7(d) below).
- 7\* The accounting standards of the profession include the following:
  - a) accounting practices recommended by the Research Committee;
  - b) accounting practices that differ from those recommended by the Research Committee, provided that there is substantial authoritative support for alternative treatment and the departure from the Research Committee's recommendations is disclosed;
  - c) accounting practices not specifically dealt with by the Research Committee but which are generally accepted for ordinary industrial and commercial enterprises, e.g., accrual accounting; and
  - d) requirements of any governing act or regulation, providing however, in the rare event that there is a conflict between the other accounting standards of the profession and a specific statutory or regulatory requirement the member, subject to the comment in 8 (below), is not relieved of the responsibility of making appropriate qualification in his report.
- 8 It should be noted that in connection with 7 (d) (above) the recommendations of the Research Committee to-date do not cover the whole spectrum of financial reporting. The Preface to the committee's Research Recommendations (dated December 1971) states:



"Recommendations are intended to apply to all types of profit oriented enterprises, unless a particular recommendation makes a specific exemption or extension. However, pending further study, the recommendations do not necessarily apply to the special problems of banks and insurance companies. No recommendation is intended to override the requirements of a governing statute."

The form and content of financial reports of banks and insurance companies are controlled, or heavily influenced, by statute or by governmental regulation. While the Research Committee is silent as to accounting methods appropriate to the circumstances of such financial institutions some accounting practices are prescribed or permitted for them by law or regulation which are different from those that would be considered normal for ordinary commercial and industrial enterprises. In these circumstances it is considered appropriate for an auditor to omit a reference to generally accepted accounting principles in his report and not to qualify his report.

- 9 The latter part of rule 206.3, while not ruling out circumstances in which financial reporting may depart from the recommendations of the Research Committee, places the burden of justification upon the member if he issues an unqualified report in such circumstances.
- 10 Apart from general requirements of rule 206.3, members should keep in mind policy statement No. 27, effective December 18, 1972, of the Securities Administrators in Canada which reads as follows:

"Where the term 'generally accepted accounting principles' is used, either in Securities Legislation, Regulations, and Companies Legislation and Regulations, the Securities Administrators will regard pronouncements by the Accounting and Auditing Research Committee of the Canadian Institute of Chartered Accountants to the extent set out in the research recommendations in the 'CICA Handbook' as 'generally accepted accounting principles'."

Council understands that in the implementation of this policy, the Securities Administrators have adopted the standards referred to in paragraph 7 above.

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Refer also to Rule 202 and CI 202, *Documentation*.

## The Consultation Service

*Information for those wishing  
to make use of the Consultation Service.*

### General

Recognizing that many members practising alone or in smaller firms encounter problems on which they would welcome the opportunity to check their judgment with an experienced member of the profession, the council, in December 1963, established the consultation service to provide such assistance in the fields of accounting and auditing.

### Consultants

A number of consultants have been selected by council because of their knowledge and reputation in the field of accounting theory, auditing practice and financial reporting. They have agreed to act as a panel to assist other members of the profession in these areas.

### **How to obtain assistance**

A practitioner requiring assistance from a consultant should call or write the Institute and ask to be supplied with the names of consultants. The Institute will select *three* names from the panel in rotation and supply the practitioner with the consultants' names, firms, telephone numbers and addresses. The practitioner will select *one* consultant and contact him directly by telephone or letter

### **Areas of consultation**

A problem should not be presented to a consultant *until the practitioner has explored all avenues of approach to a solution and has reached the point where he needs either confirmation of his findings or additional help.* He may ask the consultant —

- how to clear up a difficult point;
- for confirmation of a conclusion he has already reached; or
- for guidance on where to seek additional information.

### **Presentation of problem**

The practitioner should telephone or write the consultant and clearly state the facts. He should explain the problem as he sees it and the steps he has taken to resolve the problem. He should then clearly state the question on which he requires an answer.

### **Action by consultant**

The practitioner may expect the following results from his call or letter:

- (1) A direct answer or recommendation.
- (2) A deferment of the answer for further study, but within a stated time limit.
- (3) Suggested research references which will supply detailed information about the problem.
- (4) A recommendation that, because of the time and amount of work or research required, the matter be handled as a regular referral on a fee basis.
- (5) A recommendation that another consultant with more experience in the specific field be contacted.

### **Type of consultation**

It is hoped that in many cases the consultant will be able to give advice in the course of a telephone conversation. In other cases he may request information in writing and reply in writing. In still other cases he may request the practitioner to visit him in his office, bringing the relevant working papers. The onus, of course, will be on the practitioner to comply with the requests of the consultant, who is contributing his time to assist the practitioner.

### **Confidential relationship with clients**

It is essential that the practitioner seeking advice should avoid anything which might be interpreted as violating the confidential relationship existing between him and his client. Accordingly, the following rules, which are not intended to be all-inclusive, should be observed:

- The problem should be stated as a hypothetical one without disclosing the client's name, unless permission with respect to disclosure is first obtained.
- If, for any reason, it is felt that even stating the case as a hypothetical one might identify the client, his permission should be obtained before doing so. In this respect, any doubts should be resolved in favour of getting the client's consent.
- No documents, working papers or other material should be submitted to the consultant if this might identify the client, unless the client's approval is first obtained.

### **Responsibility of consultant**

This is a wholly voluntary and private service within the profession. Members are under no duty to consult nor is the consultant as such under any duty to respond in any particular case.

The consulting service does not contemplate the consultant assuming any legal or moral responsibility for the advice which he may give. The name of the consultant and his firm should not be disclosed to the client. It would be entirely beyond the intention of this plan for the practitioner to attempt to impress a client by suggesting that he could obtain another opinion from a prominent consultant. If another *opinion* is to be obtained, it must be on a formal referral basis. The practitioner, of course, is entitled to ask his client's permission to hold an informal consultation with a member of the consulting service.

#### **Future development**

The consulting service has been established on the basis outlined above; its contribution to the profession, and the problems involved, will be assessed from time to time. Depending on our experience, it can be modified or expanded over the years.

The success of this plan will depend on the practitioners who take advantage of it. Practitioners who have made a genuine effort to resolve a problem themselves and have reached tentative conclusions, should find it most useful to be able to check their conclusions with an experienced member of the profession before giving a final answer to their client.

## **Fees Mediation Service**

*Procedure for those wishing  
to make use of the Fees Mediation Service.*

#### **General**

The chartered accountant and his client, before deciding to make a submission for mediation, should make a genuine attempt to settle the dispute by negotiation; only if negotiation between the parties fails should the service be requested.

When disputes are brought to the attention of the Institute, and if both parties agree in writing to be bound by the decision of the mediation panel:

- the Institute obtains as much information as possible from both parties;
- a mediator(s) meets with each party or with a representative authorized by either party provided such representative shall not be legal counsel;
- the mediation panel reviews the material submitted directly to the Institute and the facts gathered by the mediator(s);
- the mediation panel's decision is eventually confirmed to each party in writing, with no reasons being given.

No charge is made for such referrals. It is understood that this procedure involves no legal obligation on the part of clients or members to refer a matter to the Fees Mediation Panel nor does it constitute a submission under the Arbitrations Act (Ontario). All material received or reviewed by the Institute or its representative will be held in strict confidence. The Institute shall be under no legal obligation with regard to any such referrals.

#### **Detailed procedure**

Before submitting a fees mediation request, both parties should be in agreement on the use of the service and their written submissions should be sent to the Institute immediately after such agreement has been reached.

#### **The client**

The client submits a letter to the secretary of the Fees Mediation Panel of the Institute containing the following:

- (1) A request that the Institute appoint a mediator or mediators to mediate the fee dispute, naming the member concerned.
- (2) An outline of the problem, stating the services rendered and the amount of fee in dispute and the reasons for the objection.
- (3) An acknowledgement that the client agrees to the related working papers being made available to the mediator(s).
- (4) An undertaking to attend meetings with the mediator(s) when requested and that he understands that neither party will be represented or accompanied by legal counsel at such meetings.
- (5) An undertaking to be bound by the decision of the fees mediation panel.

#### **The member**

The member submits a letter to the secretary of the Fees Mediation Panel of the Institute containing the following:

- (1) A request that the Institute appoint a mediator or mediators to mediate the fee dispute, naming the client concerned.
- (2) An outline of the problem stating services rendered, the amount of fee in dispute and the member's representation in support of his fee.
- (3) An undertaking to make related working papers available to the mediator(s) and to disclose to the mediator(s) full particulars in support of his fee.
- (4) An undertaking to attend meetings with the mediator(s) when requested and that he understands that neither party will be represented or accompanied by legal counsel at such meetings.
- (5) An undertaking to be bound by the decision of the fees mediation panel.

#### *Please note:*

Members and clients should clearly understand that they are under no obligation to make use of this service. It is made available on a voluntary basis to those members and their clients who wish to take advantage of it. It should be further understood that neither the Institute nor its volunteer members performing this gratuitous service will be liable in any way to members and clients and that members and clients using the service do so on that understanding.

## **Practice Advisory Service**

*Information for those wishing  
to use the Institute's Practice Advisory Service.*

#### **General**

The service began operating in May 1972. On the recommendation of the Small Practices Committee, a full-time professional practice adviser was added to the Institute's staff at that time. The adviser's background is in public practice with a small and medium-sized firm and he is knowledgeable about the problems of such practices. It has been demonstrated that the service is meeting an important need for practitioners; in a little more than a year from its commencement nearly one hundred visits to practitioners in their offices have taken place—generally of one or two days duration, but on occasion three or even more days per visit.

The service is offered *without charge* and has the very practical advantage that it is made available to the practitioner in his office and on his time schedule. As it is confined to advising and suggesting and does not include implementation and performance, use of the service is on the understanding that neither the Institute nor its staff providing the service will be held liable in any way to the practitioner.



## **Objective**

The objective of the Practice Advisory Service is to encourage and to assist the practitioner, on a voluntary and confidential basis, in his efforts to maintain quality and to improve his professional performance. The adviser works towards this objective by providing any or all of the following:

- (1) guidance on practice organization, administration and management;
- (2) review and discussion of financial statements, opinions and supporting working papers, to help the practitioner become aware to what extent he may be able to use more effective audit techniques or may be falling short of compliance with generally accepted accounting principles and auditing standards; and
- (3) review and discussion of unaudited statements and other non-opinion work.

The service is educational in purpose; it is not an "inspection" by the Institute, nor a means whereby practitioners are either accredited or censured.

Another facet of the service is that, through his in-depth contacts with practitioners, the practice adviser serves as a direct but informal line of communication between practitioner and the Institute.

## **How does the practitioner avail himself of the service?**

A practitioner wishing to use the service should initiate the request for a visit, by contacting the adviser at the Institute's office. However, if the adviser is carrying out a visit in a particular part of the province, he may seek invitations from other practitioners in that area. It is hoped that members approached in this manner will take the opportunity to use the service, particularly when it is so readily available, but there is no obligation to do so. It is provided on a voluntary basis to those who wish to take advantage of it.

## **What criteria are used by the adviser in his work?**

The criteria and resource material used by the adviser in assisting a practitioner include:

- (1) the CICA Research Recommendations as contained in the CICA Handbook;
- (2) the CICA Research Studies;
- (3) the practice guidelines contained in the Ontario Institute's relevant By-laws, Rules of Professional Conduct and Council Interpretations;
- (4) the applicable legislation of regulatory authorities; and
- (5) the auditing, accounting and practice administration texts in general use by practitioners, colleges and universities.

The experience built up by the adviser from his visits is valuable to practitioners generally since, without identifying source, he is able to suggest methods worth emulating as well as pitfalls to be avoided.

## **What advance preparation is required by a practitioner requesting the service?**

There is very little advance work required on the part of a practitioner. He may want to select files and engagements to be discussed with the adviser and formulate any particular problems and questions he wishes to present to the adviser.

Practitioners may be asked to furnish, if possible, some advance information of a general nature. This could be the character of any specific problem and questions, the approximate mix of engagements (e.g. opinion work, bookkeeping, tax, etc.) and the number and composition of the practitioner's or firm's personnel. This type of advance data is treated as confidential and enables the adviser to come well armed with appropriate resource material so that the maximum benefit is derived from the visit.

It is expected that the practitioner requesting the service will have available for reference purposes current up-dated copies of the CICA Handbook, encompassing Research Recommendations, and the Act, By-laws and Rules of Professional Conduct of the Ontario Institute.



APPENDIX III - ACCOUNTING - P.A.C. - S.M.A.O.

PUBLIC ACCOUNTANCY ACT, R.S.O. 1970 c. 373

**7.** It is the duty of the Council to administer the provisions of this Act and in particular, but without limiting the generality of the foregoing, the functions of the Council include,

- (a) the grant or refusal of licences, in accordance with this Act;
- (b) the maintenance and, if thought fit, the publication of a roll of the persons for the time being licensed under this Act;
- (c) the prescription of the fees payable on the grant or renewal of licences under this Act;
- (d) the maintenance and improvement of the status and standards of professional qualifications of public accountants practising as such in Ontario;
- (e) the consideration of matters of common interest and concern to public accountants, and the submission of representations to any government department or public authority with reference to any such matters;
- (f) the provision of scholarships for students in public accountancy and of maintenance grants for such students whose means appear to the Council to be insufficient to enable them to pursue their studies;
- (g) the conduct and encouragement, whether by means of financial assistance or otherwise, of research in accountancy;
- (h) the exercise of the disciplinary powers conferred by this Act; and
- (i) the prosecution of offences under this Act. R.S.O. 1970, c. 373, s. 7.

**9.—(1)** Except as otherwise expressly provided by this section, all matters that arise for decision at any meeting of the Council shall be decided by a majority of votes of members present and voting by show of hands.

(2) No resolution of the Council relating to,

- (a) any of the functions of the Council referred to in clause *h* or *i* of section 7;
- (b) the making of regulations under section 31;
- (c) the revocation or non-renewal of a licence granted under this Act; or
- (d) the granting of an exemption to any person pursuant to subsection 2 of section 14 from any of the conditions of section 14, or the approval of conditions subject to which such exemption shall be granted,

is valid unless approved by the votes of at least three-quarters of the members of the Council present and voting thereon.

(3) No resolution of the Council relating to any of the matters mentioned in subsection 2 is valid unless the notice calling the meeting at which the resolution is moved has specified the general nature of the business to be transacted thereat. R.S.O. 1970, c. 373, s. 9.

**12.**—(1) The Council may from time to time appoint committees from among its members.

(2) The Council may delegate to any such committee, subject to such restrictions or conditions as the Council may think fit, any of its powers or duties, other than those referred to in subsection 2 of section 9, and may dissolve any such committee. R.S.O. 1970, c. 373, s. 12.

**13.**—(1) If a person licensed under this Act,

- (a) has been convicted of a criminal offence;
- (b) becomes of unsound mind;
- (c) has been adjudged bankrupt or has made arrangement with his creditors; or
- (d) has been found on inquiry held by the Council to be guilty of conduct disgraceful to him in his capacity as a public accountant,

the Council may, subject to the provisions of this section, revoke his licence.

(2) Where the Council intends to revoke any licence in pursuance of clause *a*, *b* or *c* of subsection 1, the Council shall first cause a written notice of its intention to be served on such person in the prescribed manner and shall on application made by such person within one month from the date of the service of the notice consider any representations with regard to the matter that may be made by him to the Council, either in person or by counsel.

(3) In any case in which it appears to the Council that a person licensed under this Act has been guilty of conduct disgraceful to him in his capacity as a public accountant, the Council may cause an inquiry to be held.

(4) Where an inquiry is to be held under this section, the Council shall forthwith cause to be served on the person concerned a written notice of the proposed inquiry specifying the time and place at which it is to be held and the subject-matter thereof, and the person concerned is on application entitled to be heard at the inquiry either in person or by counsel. R.S.O. 1970, c. 373, s. 18.

**19.** Where the Council refuses the application of any person for the grant or renewal of a licence, or revokes any licence granted to any person, it shall forthwith cause written notice of such refusal or revocation to be served on such person. R.S.O. 1970, c. 373, s. 19.

**20.**— (1) No person whose licence has been revoked shall, except as provided in this section, be granted a licence under this Act.

(2) A person whose licence has been revoked may, either on his application or on motion of the Council and after inquiry, be granted a new licence and his name may be restored to the roll at the discretion of the Council either without payment of a fee or on payment of such fee as the Council may determine. R.S.O. 1970, c. 373, s. 20.

**21.** Where the Council,

- (a) refuses to grant a licence or a new licence;
- (b) refuses to renew a licence; or
- (c) revokes a licence,

the person aggrieved may, within three months from the day on which notice thereof was served on him, apply to the Supreme Court and, upon due cause shown, the court may make an order directing the Council to grant the licence, renew the licence or cancel the revocation of the licence, as the case may be, or may make such other order as may be warranted by the facts, and the Council shall forthwith comply with such order and such order is final. R.S.O. 1970, c. 373, s. 21.

**22.** If any person wilfully procures, or attempts to procure, the granting to him of a licence under this Act, or the renewal of such licence, by making or producing, or causing to be made or produced, any false or fraudulent representation or declaration, either orally or in writing, he is guilty of an offence and on summary conviction is liable to a fine of not less than \$100 and not more than \$250. R.S.O. 1970, c. 373, s. 22.

**24.—(1)** Subject to the provisions of this section, no person who is not licensed under this Act shall, within Ontario,

- (a) take or use the name or title of "Public Accountant";
- (b) practise as a public accountant, or
- (c) hold himself out as being licensed as a public accountant or use any designation or initials indicating or implying that he is licensed as a public accountant.

(2) Notwithstanding anything in this section, the Council may permit any person who is a non-resident of Ontario to practise as a public accountant within Ontario without a licence under this Act, subject to any terms and conditions that may from time to time be prescribed.

(3) Any person who contravenes provision of this section, without prejudice to any other proceedings that may be taken, is guilty of an offence and on summary conviction is liable to a fine of not less than \$100 and not more than \$250 for a first offence and to a fine of not less than \$200 and not more than \$500 for any subsequent offence.

(4) Where a contravention of this section by any person is occasioned by the fact that his licence has been revoked, it is a good defence to any proceedings in respect of such contravention to prove that, at the time when such contravention is alleged to have been committed, notice of the revocation had not been served in accordance with this Act or the regulations hereunder, or that the time for appealing from the revocation had not expired or an appeal therefrom had been brought and had not been determined. R.S.O. 1970, c. 373, s. 24

**26.** No person is entitled to recover any costs incurred or charges made as a public accountant unless such person was licensed under this Act at the time when such costs were incurred or when the services were rendered in respect of which such charges were made. R.S.O. 1970, c. 373, s. 26

**31.**—(1) Subject to the provisions of this Act, the Council shall or may, as the case may be, ~~prescribe by regulation anything~~ that is by this Act required or ~~authorized to be prescribed and~~ may make such further provisions as may seem to the Council necessary or desirable for carrying out or facilitating any of the purposes of this Act.

(2) The Council shall on receipt of the prescribed charges supply a copy of any regulation made under this Act and of any forms prescribed by such regulation to any person applying therefor.

(3) The Lieutenant Governor in Council may annul any regulation made by the Council under this Act. R.S.O. 1970, c. 373, s. 31.

## **8. RULES OF PROFESSIONAL CONDUCT**

Section 7 of The Public Accountancy Act vests Council with the responsibility for the maintenance and improvement of the status and standards of professional qualifications of public accountants practising as such in Ontario. To this end Council has prescribed the undernoted rules of professional conduct which are aimed, first and foremost, at the protection of the public and secondly at achieving orderly and courteous conduct between licensees. Without restricting the generality of Section 18(1)(d) of The Public Accountancy Act, the Council, in considering whether or not a person licensed under The Public Accountancy Act has been guilty of conduct disgraceful to him in his capacity as a public accountant, will have regard to the rules of professional conduct.

### **Integrity and Competence**

- (a) A licensee should perform his services to his clients with integrity, care and diligence. He should sustain his professional competence by keeping himself informed of, and complying with, developments in professional standards in all functions in which he practises or is relied upon because of his calling as a public accountant.
- (b) A licensee who is engaged to express an opinion on financial statements should hold himself free of any influence, interest or relationship in respect of his client's affairs, which impairs his professional judgment or objectivity or which, in the view of a reasonable observer, has that effect.
- (c) A licensee should not take any action, such as acquiring any interest, property or benefit, in connection with which he makes improper use of confidential knowledge of a client's affairs obtained in the course of his duties.
- (d) A licensee should not disclose or use any confidential information concerning the affairs of any client except when properly acting in the course of his duties or when such information is required to be disclosed by order of lawful authority.
- (e) A licensee should not sign or associate himself with any letter, report, statement, representation or financial statement which he knows, or should know, is false or misleading, whether or not the signing or association is subject to a disclaimer of responsibility.
- (f) A licensee should not express an opinion on financial statements examined by him.
  - (1) if he fails to obtain sufficient information to warrant an expression of opinion, or

- (2) if he has not complied in all material respects with the auditing standards of the profession, or
  - (3) if the exceptions or qualifications to the opinion are sufficiently material to nullify the value of such opinion, or
  - (4) subject to (3) above and unless the opinion is suitably qualified, if the financial statements were not prepared in accordance with generally accepted accounting principles.
- (g) In expressing an opinion on financial statements examined by him, a licensee should
- (1) reveal any material fact known to him which was not disclosed in the financial statements, the omission of which renders the financial statements misleading, and
  - (2) report any material mis-statement known to him to be contained in the financial statements.
- (h) A licensee in the exercise of his functions on behalf of a client should not bargain for, or receive for his own use any fee or remuneration without his client's knowledge and consent.



## SOCIETY OF MANAGEMENT ACCOUNTANTS OF ONTARIO, CODE OF PROFESSIONAL ETHICS

### SECTION "A" – PROFESSIONAL ETHICS

#### 1.01 Professional Ethics

A Code of Professional Ethics is a set of rules of conduct which a profession imposes upon itself and its members. Such rules go beyond the requirements of the law; they are intended to provide the members of a profession with guidelines as to the type of professional behaviour which is likely to gain public confidence. A code of ethics is thus a voluntary assumption of self-discipline in the service of the public interest. It is an obligation to behave in a way which will benefit the public and thus serve the best interests of the profession as a whole.

#### 1.02 The Public Interest

At the heart of all great professions there is a commitment to serve the public good. This commitment rests on a desire to serve the public and on the practitioners' commitment to and pride in their own skill and disciplined judgement.

The adoption of the Code of Professional Ethics for the Society of Industrial Accountants of Ontario recognizes and reflects the Society's concern for the future of the accounting profession in Canada and for the creative contribution which it is prepared to make to the public interest.

While accounting (like other professions) rose from humble beginnings, it is not difficult to show the significant relationship to the public interest that the profession has achieved today. Financial statements influence important social and economic decisions. The credit machinery, the audit function, the tax practice, the corporate financial reporting are today at their level of development only because the accounting profession contributed substantially to the effective operation of government and to the stability of the whole structure of social and economic institutions.

#### 1.03 The Management Accountant

A management accountant is essentially one who, as an officer, employee, consultant, manager, etc., carries out his professional functions and gives professional counsel in areas of accounting, measurements, cost determination, financial analysis and communications, design of management information systems and other areas related to the planning, organizing, directing and controlling of activities which are designed to achieve desired objectives.

#### 1.04 The Professional Attitudes

A management accountant, as any professional man, is one who is skilled in the areas of knowledge of his profession and displays a *professional attitude* toward his work.

The professional attitude of the management accountant is characterized by the following:

- \* *Responsibility*, which implies a desire to serve the public interest and a resolve to place the public good above other considerations.
- \* *Commitment*, which implies integrity, a sense of trusteeship and an obligation to protect the employer's or client's interest.
- \* *Competence*, which implies mastery of technical subjects requiring advanced intellectual training and a commitment to the continued acquisition of special skills on a high intellectual plane by means of self-imposed standards of excellence.

The rules of professional conduct which are defined in more detail in Section "B" of this Code are expressed in relation to those three principal tenets of professional attitude.

## SECTION "B" – RULES OF PROFESSIONAL CONDUCT

### 2.00 Responsibility

- 2.01 The reliance of the public, private enterprise and government on sound financial reporting and advice concerning measurements, information systems, forecasting and the communication of financial and other economic data for many purposes, imposes on the management accountant an obligation that his work be endowed with public interest. For this reason all members shall at all times maintain independence of thought and action, maintain a high standard of personal conduct and uphold the dignity and honour of the accounting profession.
- 2.02 Independence of thought and action is an expression of the professional integrity of the individual. A member who is engaged as a public accountant or auditor shall observe the rules of independence defined by the professional bodies which govern public practice. Any such member must, before he expresses his opinion on financial statements, assess his relationship with his client to determine whether he might expect his opinion to be considered independent, objective and unbiased by one who has knowledge of all the facts.
- 2.03 When preparing financial statements or expressing an opinion on financial statements which are designed to inform the public and/or management, a member shall disclose all material facts known to him so as not to make such financial statements misleading, shall acquire sufficient information to

warrant an expression of opinion and shall report all material misstatements or departures from generally acceptable accounting principles.

A member, in expressing his opinion on representations in financial statements which he has examined and which are designed to inform the public and/or management, may be held guilty of an act discreditable to the profession if:

- \* He fails to disclose a material fact known to him and which is not disclosed in the financial statements.
- \* He fails to report any material misstatements known to him to appear in financial statements.
- \* He fails to acquire sufficient information to warrant expression of an opinion.
- \* He fails to direct attention to any material departure from generally accepted accounting principles.

2.04 A member shall not commit an act discreditable to the profession.

2.05 A member shall not engage in or counsel any business or occupation which, in the opinion of the Society of Industrial Accountants, behaves in a manner which is incompatible with the professional ethics of a management accountant.

2.06 A member shall not adopt practices in obtaining engagements, as a consultant or employee, which encroach on the practice of another member; nor so act in any other way as to adversely reflect on the public or professional reputation of the management accountant.

#### 4.00 Competence

4.01 A member shall at all times maintain the standards of competence expressed by the academic and experience requirements for admission to the Society and for continuation as a professional member.

4.02 A member has an obligation to extend the knowledge upon which the profession of accounting is based to others within the profession, and to generally promote the advancement of the profession.

4.03 A member is expected to undertake as an employee or a management consultant only those engagements for which he is qualified, and will engage (or advise an employer or client to engage) other specialists whenever such an arrangement would be in the best interest of the employer or client.

4.04 A member shall bring to the attention of the Society any instances involving the reputation, dignity or honour of the Society which have resulted through lack of competence of a member or through his unethical, illegal or unfair practice.

- 4.05 A member associated with a professional partnership or company, as a partner, principal, director or officer, shall endeavour to ensure that the organization with which he is associated abides by the rules of professional conduct established by the Society.

## SECTION "C" – GUIDELINES FOR THE ENFORCEMENT OF THE CODE OF PROFESSIONAL ETHICS

The disciplinary work of the Society shall be carried out by:

- a. The Professional Conduct Committee
- b. The Review Board
- c. The Council.

### 5.00 The Professional Conduct Committee

- 5.01 The Professional Conduct Committee shall be composed of a Chairman and four members, all appointed by Council on the recommendation of the Executive.

- 5.02 The Professional Conduct Committee shall be responsible for initiation of the disciplinary work of the Society as follows:

- a. Any complaint preferred against a member shall be submitted to the Professional Conduct Committee. If, upon consideration of a complaint, it appears to the Committee that a *prima facie* case is established showing a violation of any by-law or any provision of the Code of Professional Ethics or conduct discreditable to a management accountant, the Professional Conduct Committee shall report the matter to the Secretary of the Society of Industrial Accountants of Ontario, who shall summon the member involved to appear at the next meeting of the Professional Conduct Committee.
- b. If the Professional Conduct Committee shall dismiss any complaint preferred against a member or fail to act thereon within ninety days after such complaint is preferred to it in writing, the member preferring the complaint may present the complaint in writing to the Review Board.

- 5.03 For the purpose of adjudicating charges against members, the Professional Conduct Committee shall follow a procedure as outlined below:

- a. The Secretary of the Society of Industrial Accountants of Ontario shall mail to the member concerned, at least thirty days prior to the proposed meeting of the Professional Conduct Committee, a written notice of the charges to be adjudicated. Such notice will be mailed by registered letter and addressed to the member at his last known address, according to the records of the Society.

- b. The Professional Conduct Committee shall, before the proposed meeting, assemble or cause to have assembled such evidence, documents or authenticated statements as may be deemed necessary, and at the meeting will hear evidence of witnesses and receive any additional evidence and statements which it deems necessary. It may require the attendance before it of any members and the production of any books, documents and working or other papers.
- c. At any formal hearing of a charge, the person charged shall have the right to be present during the hearing, to be represented by legal counsel or by a member, to question any witnesses (personally, by counsel or by member representative) and to submit statements and evidence and arguments.
- d. The statutory declaration of any person may be accepted as *prima facie* evidence of the facts stated in it and any witnesses may be asked to take a statutory declaration that the evidence is true.
- e. The report of any formal hearing or appeal signed by the Chairman shall be conclusive evidence of the proceedings for all purposes.
- f. A judgement in support of any charges laid before the committee shall be deemed valid if it is favoured by a simple majority of all of the members of the committee in good standing at the time the decision is rendered. A quorum shall consist of at least three members, including the Chairman. Unless it be otherwise established by Council, other procedures at all formal hearings shall be determined by the Chairman of the Professional Conduct Committee whose decision shall be final, binding and conclusive.
- g. The cost of any formal hearing will be borne by the Society unless the Professional Conduct Committee specifically rules that it should be charged to the member.
- h. If, after hearing the evidence presented by the complainant and by the defence, the Professional Conduct Committee finds the defendant guilty of an offence, it may, by a majority vote of the members present and voting, admonish or suspend for a period of not more than two years the member against whom the complaint is made or, by a two-thirds vote of the members present and voting, it may expel such member. All mem-



bers of the Committee, including the Chairman, will have one equal vote.

- i. The Professional Conduct Committee after hearing the case shall decide, by a majority vote of the members present and voting, whether the statement of the case and the decision to be published shall disclose the name of the member involved. A statement of the case and decision of the Professional Conduct Committee shall be prepared by the Chairman of the Committee.
- 5.04 The member concerned in the case decided by the Professional Conduct Committee may request a review of the decision by the Review Board; provided such a request for review is filed with the Secretary of the Society of Industrial Accountants of Ontario within thirty days after the decision of the Professional Conduct Committee has been rendered and communicated to the member.
- 5.05 Any decision of the Professional Conduct Committee shall become effective as follows:
- a. Upon expiration of thirty days after the date of the committee's decision (unless specified otherwise by the committee) and if no request for review has been properly filed with the Secretary of the Society within such thirty day period.
  - b. Upon the denial of the request for review, if such request has been properly filed within the thirty days, but has been denied by the Review Board.
  - c. Upon the effective date of a decision of the Review Board affirming the decision of the Professional Conduct Committee in cases where a review has been granted by the Review Board (or Council) and the Board (or Council) has affirmed the decision of the Professional Conduct Committee.

## 6.00 The Review Board

- 6.01 The Review Board shall be appointed by Council on the recommendation of the Executive and shall consist of a Chairman and four members, none of whom shall be members of the Professional Conduct Committee.
- 6.02 The Review Board shall be responsible for dealing with all disciplinary matters of the Society which have been submitted for ruling to the Professional Conduct Committee and against which the member concerned has filed an appeal, or with those cases on which the Professional Conduct Committee has failed to act within the specified period of time.
- 6.03 The Review Board shall follow a procedure as outlined below:
- a. After having received from the member an appeal against the decision of the Professional Conduct Committee, the Review Board shall decide, by a majority vote of Board members present and voting, whether or not such a request for review shall be

allowed. The decision by the Review Board in such matters shall be final and subject to no further review. A quorum of the Review Board shall consist of at least three of its members.

- b. If the member's request for a review of the decision of the Professional Conduct Committee is not acted upon by the Review Board within ninety days after such a request has been filed with the Secretary of the Society in writing, the member will have the right to submit his request for review to the Council of the Society. The Council may decide not to allow the request of a member for a review of the decision rendered and such a decision of the Council will be final and subject to no other review; or the Council may direct the Review Board to conduct the review of the decision and specify the date by which the decision of the Review Board shall be made available to the member.
- c. If the request for review by the Review Board is allowed, the Secretary of the Society of Industrial Accountants of Ontario shall mail to the member concerned, at least thirty days prior to the proposed meeting of the Review Board, a written notice of the acceptance of the member's request to review the decision of the Professional Conduct Committee. Such notice shall be mailed by registered mail addressed to the member concerned at his last known address according to the records of the Society.
- d. The Review Board shall review the decision of the Professional Conduct Committee in accordance with its rules of practice and/or procedure established by Council. On review of such a decision, the Review Board may affirm, modify or reverse all or any part of such decision or make such other disposition of the case as it deems appropriate. The Review Board will indicate the nature of the reasons why it has considered a review to be warranted.
- e. Any decision of the Review Board shall become effective when made unless the Review Board indicates otherwise, in which case it shall become effective at the time determined by the Review Board.

## **7.00 The Council**

- 7.01 At any time after any decisions of the Professional Conduct Committee and of the Review Board have been rendered and published, the Council may, by a two-thirds vote of the members present and voting, and on recommendation of the Executive, recall, rescind or modify any penalty of expulsion or suspension. A statement of such action shall be separately published by Council and the member duly notified of the action.

## 8.00 General

- 8.01 Any member who is suspended shall not, during the period of suspension, be considered a member for any purpose and his name shall be removed from the register for the period of the suspension.
- 8.02 All decisions of the Professional Conduct Committee, the Review Board or the Council shall be communicated to the member by the Secretary of the Society no later than fourteen days after the decision has been rendered.
- 8.03 Neither the Society nor the Council shall be required to take notice of any published article or private communication or of any other statement concerning the conduct of a member.
- 8.04 If the Society of Industrial Accountants of Ontario requests the resignation of a member, or has withdrawn from the register of the Society the name of any member for reasons of unprofessional conduct, the Secretary of the said Society shall inform the Secretary of the Canadian Society of the name of such member and the reason for the action taken. The Secretary of the Canadian Society shall transmit this information to the Secretary of each Provincial Society.
- 8.05 The Society of Industrial Accountants of Ontario agrees to honour the disciplinary actions of all other Societies with which it is affiliated.

APPENDIX IV - ACCOUNTING - C.G.A.A.O.

CERTIFIED GENERAL ACCOUNTANTS ASSOCIATION OF ONTARIO, BY-LAWS

THE CERTIFIED GENERAL ACCOUNTANTS ASSOCIATION  
OF ONTARIO  
INCORPORATED BY LETTERS PATENT

**Preamble**

WHEREAS the Corporations Act 1953 provides that with the exceptions therein mentioned the Lieutenant-Governor may in his discretion, by Letters Patent, issue a Charter to any number of persons, not less than three, of twenty-one or more years of age, who apply therefore, constituting them any others who become shareholders or members of the corporation thereby created a corporation for any of the objects to which the authority of the Legislature extends;

AND WHEREAS by the said Act it is further provided that the Provincial Secretary may in his discretion and under the Seal of his office have, use, exercise and enjoy any power, right or authority conferred by the said Act on the Lieutenant-Governor;

AND WHEREAS by their Application in that behalf the persons herein named have applied for the issue of a Charter constituting them a corporation for the carrying out of the undertaking hereinafter set forth;

AND WHEREAS it has been made to appear that the said persons have complied with the conditions precedent to the issue of the Charter and that the said undertaking is within the scope of the said Act;

**Incorporation. Corporate name.**

NOW THEREFORE KNOW YE that under the authority of the hereinbefore in part recited Act I DO BY THESE LETTERS PATENT issue a Charter to the persons hereinafter named that is to say:

Thomas Coleman Grandy, Assistant Secretary-Treasurer, James Saunders Dow, Chief Accountant, both of the Township of North York, in the County of York and Province of Ontario; Ross Roy Gillespie, Treasurer, and John Allen Sheridan, Accountant, both of the City of Toronto, in the said County of York; Harold Ernest Garland, of the Township of Vaughan, in the said County of York, Income Tax Assessor; and Arthur Frederick of the City of Ottawa, in the County of Carleton and Province of Ontario, Income Tax Assessor; constituting them and any others who become members of the Corporation without share capital under the name of

THE CERTIFIED GENERAL ACCOUNTANTS ASSOCIATION  
OF ONTARIO

**Objects**

for the following objects, that is to say:

- (a) TO promote the interests, by membership and otherwise, of all present and future Certified General Accountants, domiciled in Ontario, who are or who become certified members of the General Accountants Association, incorporated by Special Act of the Parliament of Canada (3 & 4 George V, Chapter 116) who, having passed the required examinations and having complied with the practical accounting experience requirements, are entitled to the designation "Certified General Accountant" and the use of the initials "C.G.A.";
- (b) TO promote and increase the knowledge, skill, proficiency and usefulness of its members in all things relating to the business or profession of an accountant or auditor in private or public practice;

- (c) TO establish lectures and classes for students-in-accounts and to enter into agreement with the governing body of any university for the attendance of students-in-accounts at such lectures, classes and correspondence courses as may come within the course of subjects prescribed by the by-laws of the Corporation;
- (d) TO hold such examinations and to prescribe such tests of competency as may be deemed expedient to qualify for admission to membership, and to grant certificates of efficiency to such persons;
- (e) TO discipline any member guilty of any fault or misconduct in the practice of his business or profession;
- (f) TO invest the moneys of the Corporation not immediately required for the objects of the Corporation in any securities in which, under The Trustee Act or any other Act, trustees may invest trust funds; and
- (g) TO affiliate with any other association having objects the same as or similar to those of the Corporation;

Head Office

THE HEAD OFFICE of the Corporation to be situate at the said City of Toronto; and

Directors

THE FIRST DIRECTORS of the Corporation to be Thomas Coleman Grandy, James Saunders Dow, Ross Roy Gillespie, John Allen Sheridan, Harold Ernest Garland and Arthur Frederick, hereinbefore mentioned;

Without Purpose of Gain

AND IT IS HEREBY ORDAINED AND DECLARED that the Corporation shall be carried on without the purpose of gain for its members and any profits or other accretions to the Corporation shall be used in promoting its objects;

Board of Governors

AND IT IS HEREBY FURTHER ORDAINED AND DECLARED that the directors of the Corporation shall constitute the Board of Governors of the Corporation.

GIVEN under my hand and Seal of office at the City of Toronto in the said Province of Ontario this second day of August in the year of Our Lord one thousand nine hundred and fifty-seven.

(Seal)

(Signed)

G. H. DUNBAR,  
Provincial Secretary

## ARTICLE 15

### MAINTENANCE OF STANDARDS

1. In order to maintain the standards of the Association the Board shall;

(a) Enquire into, hear and pronounce upon any complaints made against any member of the Association by another member, charging him with any breach of discipline or with any action derogatory to the honour of the Association. If, after hearing the members and such witnesses as they may present, the Board declares the charge to be well founded, the Board may proceed to suspend the accused member for a period named by them, or they may expel him from the Association;

(b) Hear, with a view to reconciliation between the members of the Association, particulars of any differences that may arise regarding professional matters;

(c) Hear and decide upon all complaints and claims made against members of the Association, by persons other than members of the Association, in matters connected with the professional duties of such members;

(d) Make and establish rules regulating the conduct of the members; and especially declare what shall constitute a breach of discipline, or be regarded as an offense derogatory to the good standing of the members of the Association; determine the time and manner of hearing for



any such offense; the nature, character and extent of the penalty to be inflicted; and generally execute all rules necessary to carry into effect the full meaning of the present By-laws and objects of the Association.

(e) Suspend or expel any member convicted of a criminal offence upon production of a certified copy of the said conviction.

(f) Assign such investigation to a committee.

2. In all cases in which members are disciplined or expelled by the Board, or in which disciplinary rules are made by the Board assent to the resolution shall be signified by the signatures of the members present and a simple majority shall carry the resolution, and the notice calling the meeting of the Board shall specify in detail the object of such meeting.

3. Any member suspended or expelled by the Board for misconduct shall have the right of appeal to the Association at the next following Annual General Meeting or at a Special General Meeting, provided that written notice of such appeal is filed by the affected member with the Secretary within thirty (30) days of the date of mailing notice of the member's suspension or expulsion.

4. It shall be the duty of the Secretary to receive all complaints against any member of the Association from whatever source. All complaints shall be in writing and signed by the complainant.

5. Any member may tender his resignation which must be in writing, but it shall not take effect until all arrears of fees, special assessments and other indebtedness to the Association have been fully paid.

6. Members whose resignations are received by the Secretary within thirty (30) days subsequent to the commencement of a fiscal year shall not be liable for the annual dues for that fiscal year.

7. Members whose resignations are received by the Secretary after the expiration of the said period of thirty days shall be liable for the annual dues for the current fiscal year and the Board may decline to consider a resignation until such dues are paid; provided, however, that the Board may, at its discretion, waive this stipulation.

### EXPULSION OR SUSPENSION

8. Any member who is in default for Annual Dues, or any portion thereof, three months after they become due and payable may, with notice, be suspended from membership by the Board.

9. Any member shall ipso facto cease to be a member in the event of and upon his failing, for two consecutive years, to pay his annual fees and assessments.

### REINSTATEMENT OF MEMBERSHIP

10. Any person whose membership in the Association has been suspended, or whose resignation has been accepted, may apply in writing to the Board for reinstatement of membership.

(a) The Board shall have the power to refuse or grant such application and to prescribe the conditions upon which the application may be granted.

(b) Such conditions may include the payment of all arrears of annual or other fees, the submission of such written evidence as may be prescribed, the submission of statements showing the present financial position of the applicant, and such other conditions as the Board may deem fit to be prescribed.

(c) If the Board refuses such application the applicant shall have the right of appeal to the Association at the next following Annual General Meeting or at a Special General Meeting, provided that notice of such appeal, in writing be filed by the applicant with the Secretary within thirty days of the date of mailing notice of the Board's refusal to grant the application for reinstatement.

### PROFESSIONAL CONDUCT

11. All members of the Association are required to comply with the rules of Professional Conduct of the Association as published from time to time by the Board of Governors of this Association.

## CERTIFIED GENERAL ACCOUNTANTS ASSOCIATION OF ONTARIO, CODE OF ETHICS AND RULES OF PROFESSIONAL CONDUCT

### Introduction

This National Code of Ethics provides uniform rules and principles of professional conduct by which members of each provincial association will govern themselves in discharging their duties and responsibilities.

Any Ontario member who contravenes any of these rules and/or principles shall be accountable to the Board of Governors of the Certified General Accountants Association of Ontario.

A Certified General Accountant shall always be mindful of his responsibility as a member of the Accounting profession, and shall carry on his work with fidelity to clients or employers, fairness to employees, and loyalty to the Association, in a manner worthy of a professional Accountant.

### Definitions

In this Code, unless otherwise specifically stated, the following terms mean:

|                              |  |
|------------------------------|--|
| 101<br>Member                | An individual holding a Certified General Accountant certificate and in good standing.   |
| 102<br>The Association       | National: The General Accountants Association;<br>Provincial: The Certified General Accountants Association, or;<br>The Professional Corporation of Certified General Accountants of Quebec (Quebec only). |
| 103<br>The Profession        | The profession of accountancy.   |
| 104<br>Opinion               | The auditor's report which accompanies audited financial statements to which a member lends his name.  |
| 105<br>Accountant's Comments | Remarks accompanied by a disclaimer signed by, or identified with the accountant, which make it clear that he is not giving an opinion, where such remarks relate to unaudited financial statements.       |
| 106<br>Public Accounting     | Providing professional services to the public.   |

### Duties to the Public

A member:

201  
Terms of Engagement

Shall state clearly to his client the nature and scope of services to be rendered under the terms of his engagement.

|                                      |  |
|--------------------------------------|--|
| 202<br>Public Interest               | Shall safeguard the interest of his client, employer and the general public.   |
| 203<br>Breach of Trust               | Shall not breach the trust of a client or an employer.   |
| 204<br>Trust & Separate Bank Account | Shall, while holding funds or property in trust, keep the necessary records to show that the funds or property have been properly administered.  |
| 205<br>Expressing an Opinion         | Shall not express an opinion on a financial report unless he has performed an adequate audit.  |
| 206<br>Opinion on Financial Reports  | Shall issue an adverse opinion with reasons on any financial report whether for publication or not, if the report is prepared in a manner which might tend to be misleading.                                 |
| 207<br>Known Omission                | Shall disclose in his auditor's report any material fact or information known to him which is not disclosed in a financial report, the omission of which would tend to make the financial report misleading. |
| 208<br>Material Discrepancy          | Shall immediately disclose any material discrepancy that becomes known to him concerning a financial report on which he has expressed an opinion, or rendered Accountant's Comments.                         |
| 209<br>Restrictions                  | Shall give a denial of opinion with reasons on a financial report if his exceptions are sufficiently material to render his opinion contradictory and/or inconclusive.                                       |
| 211<br>Accountant's Comments         | Shall, when submitting an accountant's comments with an unaudited financial statement, disclose on each page of such financial statement that it has been prepared without audit.                            |
| 212<br>Sufficient Information        | Shall not lend his name to any comments and/or recommendations concerning financial reports unless he has received all the information he requires to support such comments and/or recommendations.          |
| 213<br>Disclosure of Forecast        | Shall make full disclosure that he does not vouch for the reliability of forecasts contingent upon future transactions.  |
| 214<br>Acknowledged Standards        | Shall adhere to acknowledged standards of financial reporting unless departure from these standards is fully disclosed.  |
| 215<br>Right to Take Cognizance      | Shall respect the right of any client, providing that his fee is paid, to have access to the documents in any record made by a member concerning his client, and to obtain copies of those documents.        |

## Confidential Information

A member:

|                   |   |
|-------------------|---|
| 301<br>Secrecy    | Shall preserve the secrecy of confidential information that becomes known to him in the practice of his profession.                             |
| 302<br>Disclosure | Shall not divulge information concerning the business affairs of his employer or client without their consent, unless required to do so by law. |

|   |   |
|---|---|
| 303<br>Discussion                                     | Shall not discuss with another person the business affairs of his employer or client without his employer's or client's consent.  |
| 304<br>Information Used for<br>Personal Advantage     | Shall not make use of confidential information relating to the business of his employer or client to directly or indirectly obtain a personal advantage, without his employer's or client's consent.  |
| <h2>Duties to the Profession</h2>                     |   |
| A member:   |   |
| 401<br>Conduct  | Shall always be mindful of his duties and responsibilities toward the profession, and on all occasions shall act in a manner which will enhance the image of the profession.  |
| 402<br>Compatible Activities                          | May engage in any profession, trade, industry, office or duty except where these undertakings are detrimental to the public good or to the standards of the profession.   |
| 403<br>Unlawful Activity                              | Shall not lend his name, himself, or his services to any activity which he knows, or which a reasonably prudent person would believe to be, unlawful.   |
| 404<br>Discredit                                      | Shall not lend himself knowingly to any practice, pronouncement or act which would be of a nature to discredit the profession.  |
| 405<br>Procurement of Business                        | Shall not obtain business or a client through means detrimental to the profession.  |
| 406<br>Ethical Accounting<br>Bodies                   | Shall report to his Association any situation of which he has sufficient personal knowledge and which he thinks may be detrimental to the profession.   |
| 407<br>Criticism of Professional<br>Colleagues        | Shall not criticize another professional colleague without first submitting his criticism to such other colleague for explanation. The member thereafter shall inform such colleague as to the action he has taken with regards to the criticism.   |
| 408<br>Legal Action Against<br>Professional Colleague | Shall, before entering into a legal action against another member, which might tend to bring the profession into disrepute, advise that member of his intention. He shall also give the Association as much notice as is possible of his intention, giving general details of the basis of the proposed action. |
| 409<br>Discrimination                                 | Shall not discriminate against a person because of the race, colour, sex, age, religion, national extraction or social origin of such person.   |
| 410<br>Specialization                                 | Shall not use the title of specialist.  |

## Duties to the Association

A member:

501  
Certificate Obtained  
Fraudulently

Shall notify the Association immediately when he is aware that a person has obtained certification by means of fraud or some other irregularity.

502  
Admittance to  
Membership

Shall report to the Association a fact known to him, sufficient to prevent the admittance of any person whose membership may be detrimental to the Association.

503  
Reputation

Shall report a fact known to him which puts or seems to put in doubt the reputation of the Association.

504  
Insolvency

Shall immediately notify the Association if he makes an assignment in bankruptcy.

505  
Representation  
or Request

Shall not initiate any representation or formulate any request to a public body or to a Government relating to the Association or the profession without the consent of the Association. This rule shall not apply to a member who is a civil servant or who is employed by the government of Canada, or by a province, and who is required to take part in such enactment, alteration, repeal or amendment by the terms of his employment.

## Duties to Members

A member:

601  
Integrity

Shall notify the Association of any known material fact which appears to put in doubt the integrity of a member.

602  
Public Statement

Shall not make a public statement:

- (a) on the incompetence of another member of the Association;
- (b) detrimental to the reputation of another member of the Association.

603  
Advancement

Shall not seek professional advancement through unfair means or conduct detrimental to another member of the Association.

604  
Solicitation

Shall not directly or indirectly solicit the clients or the position of another member.



|                               |  |
|-------------------------------|--|
| 605<br>Employment offer       | Shall inform a member of his intent to offer employment to an employee of this member. This restriction does not apply if the employee applies to a member on his own initiative or in response to a public advertisement. |
| 606<br>Assistance to Students | Shall encourage and assist students in their professional development and in obtaining the experience and proficiency required for certification.  |

## Duties of Members in Public Practice

A member:

|  |  |
|--|--|
| 701<br>Responsibility<br>and Control         | Shall personally undertake, or delegate to a member of the Association, the charge and management of each public practice office maintained by him or his partnership.   |
| 702<br>Firm Name of a Sole<br>Proprietorship | Shall when practising his profession as a Certified General Accountant as a sole proprietor do so only under his own name or the name of his predecessor who had practised as a Certified General Accountant adding or not after his firm's name "& Co." or a similar term. In the latter case, he shall make it clearly understood to the public that he is not practising in partnership with one or more persons. |
| 703<br>Firm Name of<br>Partnership           | Shall, when practising in a partnership of Certified General Accountants, ensure that the firm name consists of one or more names of the partners, former partners or predecessors who had practised as Certified General Accountants with or without the addition of "& Co." or similar term after the name.  |

|  |   |
|--|---|
| 704<br>Identification  | Shall not indicate by way of a notation on letterhead, telephone listing, public advertisement or otherwise that he has an office in an area where he is only represented by another member, who in addition carries on a practice under his own name or a firm name. |
| 705<br>Representing a Firm                                   | Shall not indicate on his letterhead, telephone listing or elsewhere in his publicity that he maintains a branch of another firm of public accountants if he only represents that firm.   |
| 706<br>Partners Who Are Not<br>Members of the<br>Association | Shall practise in a partnership described as a firm of "Certified General Accountants" only if all the partners are members in good standing of the Association.  |
| 707<br>Person Expelled<br>or Suspended                       | Shall obtain through the Association, the facts concerning the expulsion or suspension before knowingly employing a person who has been expelled or who is under suspension from any accounting body.   |
| 708<br>Services by an<br>Employee                            | Shall not permit an employee to perform professional services which the member himself is not permitted to render.  |
| 709<br>Replacement   | Shall, before accepting an appointment in which he replaces another professional accountant or firm, determine from such other person or firm whether there is any reason why such appointment should not be accepted.  |
| 710<br>Personal Practice when an<br>Employee                 | Shall not undertake professional work for his own account without the consent of his employer.  |

## Discipline

A member:

|                        |   |
|------------------------|---|
| 1001<br>General Clause | Shall be subject to disciplinary action for any offence which constitutes a breach of professional conduct. |
| 1002<br>Application    | Shall be subject to disciplinary action only through his Provincial Association.                            |

## APPENDIX V - ENGINEERS

THE PROFESSIONAL ENGINEERS ACT, R.S.O. 1970, c. 366 as am. 1972, c. 45

### ASSOCIATION

**3.—**(1) The body politic and corporate known as the "Association of Professional Engineers of the Province of Ontario" incorporated under *The Professional Engineers Act, 1922* is hereby continued.

(2) All persons who were members of the Association on the 1st day of August, 1969 or who have been admitted as members since that day constitute the Association.

(3) The objects of the Association are,

- (a) to regulate the practice of professional engineering and to govern the profession in accordance with this Act, the regulations and the by-laws;
- (b) to establish and maintain standards of knowledge and skill among its members; and
- (c) to establish and maintain standards of professional ethics among its members,

in order that the public interest may be served and protected.  
R.S.O. 1970, c. 366, s. 3 (1-3).

(4) The head office of the Association shall be in The Municipality of Metropolitan Toronto. 1972, c. 45, s. 1.

(5) The Association may purchase, acquire or take by gift, devise or bequest for the purposes of the Association and the furtherance of its objects, but for no other purposes or objects, any real or personal property, and may sell, mortgage, lease or otherwise dispose of any such property. R.S.O. 1970, c. 366, s. 3 (5).

### COUNCIL

**4.—**(1) There shall be a council which shall consist of a president, a first vice-president, a second vice-president, an immediate past president, two elected councillors-at-large, ten elected regional councillors and five appointed councillors, all of whom shall be members and residents of Ontario.

(2) The president and the vice-presidents shall have such qualifications as are prescribed by by-law and shall be elected annually by vote of the members.

(3) One councillor-at-large shall be elected each year for a two-year term by vote of the members.

(4) There shall be elected from each of the five regions established and defined by by-law two regional councillors, one to be elected from each region each year for a two-year term by vote

**7.—**(1) The council may make regulations respecting any matter that is outside the scope of the power to pass by-laws specified in section 8 and, without limiting the generality of the foregoing,

- (a) prescribing the scope and conduct of examinations of candidates for registration;
- (b) prescribing the form of the summons referred to in subsection 10 of section 25;
- (c) respecting the practice and procedure for hearings held under this Act;
- (d) defining "professional misconduct" for the purpose of this Act and the regulations;

- (e) defining classes of specialists in the various fields of engineering;
  - (f) prescribing the qualifications required of specialists or any class thereof;
  - (g) providing for the designation of specialists upon application and examination or otherwise, for the suspension or revocation of such designations, and for the regulation and prohibition of the use of terms, titles or designations by professional engineers indicating specialization in any field of engineering;
  - (h) regulating and prohibiting the use of terms, titles or designations by professional engineers in independent practice.
- (2) No regulation is effective,
- (a) until it has been submitted to the members for approval by means of a letter ballot returnable within thirty days after the mailing thereof and it has been approved by a majority of those voting within the prescribed time; and
  - (b) until it has been approved by the Lieutenant Governor in Council. R.S.O. 1970, c. 366, s. 7

9.—(1) The council shall prepare and publish from time to time a code of ethics containing standards of conduct designed for the protection of the public, which standards members and licensees must subscribe to and follow in the practice of professional engineering.

(2) Copies of the code of ethics shall be sent to the members and licensees and shall be available free of charge to members of the public who apply therefor. R.S.O. 1970, c. 366, s. 9.

#### PARTNERSHIPS, CORPORATIONS

20.—(1) No partnership, association of persons or corporation as such shall be a member or a licensee, or shall, except as authorized by this section, practise professional engineering.

(2) A partnership, association of persons or corporation that holds a certificate of authorization may, in its own name, practise professional engineering,

- (a) if one of its principal or customary functions is to engage in the practice of professional engineering; and
- (b) if the practice of professional engineering is done under the responsibility and supervision of a member of the partnership or association of persons, or of a director or full-time employee of the corporation, as the case may be, who,
  - (i) is a member, or
  - (ii) is a licensee, in which case the practice of professional engineering shall be restricted to the work specified in the licence of the licensee.

(3) A partnership, association of persons or corporation that desires a certificate of authorization shall submit to the registrar an application in the prescribed form containing,

- (a) the names and addresses of all its partners, members, officers or directors, as the case may be;
- (b) the names of all its partners, members of associations of persons, directors of corporations, or full-time employees of corporations, as the case may be, who are the members or licensees who will be in charge of professional engineering on its behalf;

- (c) from among the names specified under clause b the name or names of its official representative or representatives whose duty it is to ensure that this Act, and the regulations and the by-laws are complied with by the partnership, the association of persons or the corporation, as the case may be,

and shall, whenever there is a change in the particulars given in its application, give notice of the change to the registrar within thirty days after the effective date of the change.

(4) If subsection 3 is complied with, the registrar shall issue to the applicant a certificate of authorization.

(5) Where the holder of a certificate of authorization ceases to have any official representative, the certificate is *ipso facto* revoked, and the partnership, association of persons or corporation shall not practise professional engineering until a new certificate of authorization is issued.

(6) Where the council finds that the holder of a certificate of authorization has failed to observe any of the provisions of this section or has been guilty of conduct that would, in the case of a member or licensee, have been professional misconduct, the council may reprimand the holder or suspend or revoke the certificate of authorization.

(7) Sections 24, 25 and 26 apply *mutatis mutandis* to the refusal to issue a certificate of authorization and to the revocation or suspension of a certificate of authorization. R.S.O. 1970, c. 366, s. 20

#### HEARINGS, DISCIPLINARY

**25.—(1)** Subject to subsection 2, where the council finds that a person who is a member or licensee is guilty of professional misconduct or has obtained registration as a member or has been issued a licence by reason of misrepresentation by such person, the council may by order do one or more of the following:

1. Reprimand such person and, if considered proper, direct that the fact of the reprimand be recorded on the register.
2. Suspend the membership or licence of such person for such time as the council considers proper and direct that the reinstatement of such membership or licence on the termination of such suspension be subject to such conditions, if any, as the council considers proper.
3. Direct that the imposition of any penalty be suspended or postponed for such period and upon such terms as the council considers proper and that at the end of such period and upon the compliance with such terms any penalty be remitted.
4. Direct that the membership or licence of such person be cancelled and that the name of such person be removed from the register.
5. Direct that the decision of the council be published in detail or in summary in the official journal of the Association or in such other manner or medium as the council considers appropriate in any particular case.
6. Direct that, where it appears that the proceedings were unwarranted, such costs as to the council seem just be paid by the Association to the member or licensee whose conduct was the subject of such proceedings.



(2) The council shall not take any action under subsection 1 unless,

- (a) a complaint under oath has been filed with the registrar and a copy thereof has been served on the person whose conduct is being investigated;
- (b) the person whose conduct is being investigated has been served with a notice of the time and place of the hearing; and
- (c) the council has heard evidence of or on behalf of the complainant and, if the person whose conduct is being investigated appears at the hearing and so requests, has heard his evidence or evidence on his behalf and has reached the decision that he is guilty.

(3) Any person presiding at a hearing may administer oaths to witnesses and require them to give evidence under oath.

(4) If the person whose conduct is being investigated fails to appear in answer to the notice at the time and place appointed, the hearing may be conducted in his absence.

(5) Hearings shall be held *in camera*, but if the person whose conduct is being investigated requests otherwise by a notice in writing delivered to the registrar before the day fixed for the hearing, the council shall conduct the hearing in public or otherwise as it considers proper.

(6) The council may adjourn any hearing at any time and from time to time.

(7) A person whose conduct is being investigated, if present in person at the hearing, has the right to be represented by counsel or agent, to adduce evidence and to make submissions, and any such person may be compelled to attend and give evidence in the manner provided in subsection 10, but such person shall be advised of his right to object to answer any question under section 9 of *The Evidence Act* and section 5 of the *Canada Evidence Act*.

(8) The oral evidence submitted at a hearing shall be taken down in writing or by any other method authorized by *The Evidence Act*.

(9) The rules of evidence applicable in civil proceedings are applicable at hearings, but at a hearing members of the council may take notice of generally recognized technical or scientific facts or opinions within the specialized knowledge of members of the council if the person whose conduct is being investigated has been informed before or during the hearing of any such matters noticed and he has been given an opportunity to contest the material so noticed.

(10) The president, a vice-president, the immediate past president or the registrar may, and the registrar upon application of a person whose conduct is being investigated shall, issue a summons in the form prescribed by regulation, commanding the attendance and examination of any person as a witness, and the production of any document the production of which could be compelled at the trial of an action, to appear before the council at the time and place mentioned in the summons and stating that failure to obey the summons will render the person liable to imprisonment on an application to the Supreme Court, but the person whose attendance is required is entitled to the like conduct money and

payment for expenses and loss of time as upon attendance as a witness at a trial in the Supreme Court

(11) If any person,

- (a) on being duly summoned to appear as a witness makes default in attending; or
- (b) being in attendance as a witness refuses to take an oath legally required to be taken, or to produce any document in his power or control legally required to be produced by him, or to answer any question which he is legally required to answer; or
- (c) does any other thing which would, if the council had been a court of law having power to commit for contempt, have been contempt of that court,

the person presiding at the hearing may certify the offence of that person under his hand to the Supreme Court and the court may thereupon inquire into the alleged offence and after hearing any witnesses who may be produced against or on behalf of the person charged with the offence, and after hearing any statements that may be offered in defence, punish or take steps for the punishment of that person in the like manner as if he had been guilty of contempt of court.

(12) At a hearing the complainant and the person whose conduct is being investigated have the right to examine the witnesses called by them respectively, and to cross-examine the witnesses opposed in interest.

(13) The decision taken after a hearing shall be in writing and shall contain or be accompanied by the reasons for the decision in which are set out the findings of fact and the conclusions of law, if any, based thereon, and a copy of the decision and the reasons therefor, together with a notice to the person whose conduct is being investigated of his right of appeal, shall be served upon him within thirty days after the date of the decision.

(14) A record shall be compiled for every hearing consisting of the complaint and the notice referred to in subsection 2, any intermediate rulings or orders made in the course of the proceedings, a transcript of the oral evidence, if a transcript has been prepared, such documentary evidence and things as were received in evidence and the decision and the reasons therefor, provided that documents and things received in evidence may be released to the persons tendering them when all appeals have been finally disposed of or the right to appeal has terminated.

(15) Any document required to be served under this Act upon a person whose conduct is being investigated shall be served personally upon him, but where it appears that service cannot be effected personally, the document may be served by mailing a copy thereof in a registered letter addressed to him at his last known residence or office address as shown by the records of the Association, and service shall be effected not less than ten days before the date of the hearing or the event or thing required to be done, as the case may be, and proof by affidavit of the service is sufficient.

(16) Where a member or licensee has been suspended from practising under this section, he may, upon payment of all fees and other costs owing by him to the Association, apply to the council to be reinstated as a member or licensee, as the case may be, and the council may terminate the suspension of such member or licensee upon such terms as it considers proper.

(17) A person whose membership or licence has been cancelled under this section may apply to the council for membership or for a licence, as the case may be, and the council shall, subject to subsection 18, hear the application and make such order as it

considers proper and may include as a term of any such order such conditions as the council considers proper to be fulfilled before the applicant is admitted to membership or granted a licence or to be observed by such member or licensee thereafter.

(18) Except with the consent of the council, no application under subsection 17 shall be heard before the expiry of two years from the date of the cancellation of membership or licence or the date of the final disposition of any appeal.

(19) Upon a hearing for admission to membership or for the granting of a licence under subsection 17, the council shall follow, in so far as practicable, the procedure provided for in the case of a complaint under this section, and a former member or licensee has the same right of appeal from an order made by the council under subsection 17 as is provided in section 26.

(20) The council may appoint a committee to act for and on its behalf composed of not fewer than five members of the council, one of whom shall be the president, a vice-president or the immediate past president, and may delegate to the committee all or any of its powers and duties under this section upon such terms and conditions, if any, as the council considers proper, and a decision or order of the committee is the decision or order of the council.

(21) Except in the case of professional misconduct constituting incompetence on the part of the person whose conduct was investigated, the suspension or cancellation of the membership or licence of a person whose conduct was investigated under this section does not become effective until any appeal has been finally disposed of or the right of appeal has terminated. R.S.O. 1970, c. 366, s. 25.

#### OFFENCES

**27.—**(1) Every person, other than a member or a licensee, who,

- (a) takes and uses orally or otherwise the title "Professional Engineer" or "Registered Professional Engineer" or uses any addition to or abbreviation of either such titles, or any word, name or designation that will lead to the belief that he is a professional engineer, a member or a licensee or, except as permitted by section 2, uses the title or designation "engineer" in such a manner as will lead to the belief that he is a professional engineer, a member or a licensee;
- (b) advertises, holds himself out, or conducts himself in any way or by any means as a member or a licensee; or
- (c) engages in the practice of professional engineering,

is guilty of an offence.

(3) Where a partnership, association of persons or corporation that has no subsisting certificate of authorization,

- (a) practices professional engineering;
- (b) uses orally or otherwise any name, title, description or designation that will lead to the belief that it is entitled to practice professional engineering; or
- (c) advertises, holds itself out or conducts itself in any way or in such manner as to lead to the belief that it is entitled to practise professional engineering.

every member of the partnership, every member of the association or persons, or the corporation and every director thereof, is guilty of an offence.

(4) Where a partnership, association of persons or corporation that has a subsisting certificate of authorization practises professional engineering in contravention of this Act, every member of the partnership, every member of the association of persons, or the corporation and every director thereof, is guilty of an offence.

(5) Every person, member of a partnership, member of an association of persons, and every corporation and director thereof, who is guilty of an offence under this section is on summary conviction liable to a fine of not more than \$1,000 or to imprisonment for a term of not more than six months, or to both.

(6) No proceedings shall be commenced for a contravention of any of the provisions of this section after two years from the date of the commission of such contravention. R.S.O. 1970, c. 366, s. 27.

# ASSOCIATION OF PROFESSIONAL ENGINEERS, BY-LAWS, REGULATIONS AND CODE OF ETHICS

8. For the purposes of the Act and the regulations, "professional misconduct" means:
  - (a) gross negligence;
  - (b) infamous, disgraceful or improper conduct in a professional respect, including any violation of the code of ethics prepared and published by the council pursuant to section 9 of the Act;
  - (c) incompetence;
  - (d) conviction of a serious criminal offence by a court of competent jurisdiction;
  - (e) continued breach of the regulations or by-laws of the Association. O. Reg. 449/69, s. 8.
9. For the purposes of section 8,
  - (a) "gross negligence" means any act or omission in the carrying out of work of a professional engineer that shows a reckless or deliberate disregard of or indifference to the rights or safety of others;
  - (b) "incompetence" means lack of adequate knowledge of, or continued neglect or failure to exercise the ordinary skills of a professional engineer;
  - (c) "serious criminal offence" means
    - (i) any act committed in Canada that is punishable on indictment under the Criminal Code (Canada), and
    - (ii) any act that if committed in Canada would be punishable on indictment under the Criminal Code (Canada),but does not include any political offence committed outside Canada or any offence that does not affect the fitness of a professional engineer to practice his profession. O. Reg. 449/69, s. 9.

## PRACTICE AND PROCEDURE FOR HEARINGS

10. Contents of Complaints and Particulars.
  - (1) Every complaint filed under the provisions of subsection 2 of section 25 of the Act shall,
    - (a) contain a concise statement of the facts relevant to the complaint;
    - (b) if professional misconduct is alleged, specify the applicable clauses of sections 8 and 9 of Regulation 691 of Revised Regulations of Ontario, 1970 and any section of the Code of Ethics relied upon by the complainant;
    - (c) if misrepresentation is alleged, specify the respect in which the complaint is made;
    - (d) be divided into consecutively numbered paragraphs, each of which shall be confined as nearly as may be to a separate and distinct portion of the subject matter of the complaint;
    - (e) be endorsed with the name and address of the complainant or the complainant's solicitor to whom communications may be sent. O. Reg. 111/71, s. 2.
  - (2) The person whose conduct is being investigated may by a demand for particulars served upon the complainant and the registrar require the complainant to deliver such further and better particulars of the complaint as may be set forth in the demand for particulars. O. Reg. 111/71, s. 2.
  - (3) If the complainant has not served a reply to the demand for particulars served under section 2 not less than ten days prior to the date of the hearing, the person whose conduct is being investigated may apply at the commencement of the hearing for directions for particulars. O. Reg. 111/71, s. 3.
  - (4) Upon any application pursuant to section 3 or upon its own motion, the council may dismiss the complaint for lack of particularity or may direct the complainant to furnish such further and better particulars as in the opinion of the council may be required for the purposes of the hearing and may adjourn the hearing until such time as such particulars are delivered. O. Reg. 111/71, s. 4.
  - (5) If the complainant fails to comply with a direction for further and better particulars, the person whose conduct is being investigated may, after giving proper notice to the complainant, apply to the council for the dismissal of the complaint against him. O. Reg. 111/71, s. 5.
  - (6) Particulars delivered pursuant to a demand for particulars under section 2 or a direction of the council under section 4 shall form part of the complaint and shall be included in the record of the hearing. O. Reg. 111/71, s. 6.



## COMMITTEES

**82. The council shall appoint each year the following standing committees:**

- (a) Executive;
- (b) Legislation;
- (c) Practice and Ethics;
- (d) Professional Development;
- (e) Consulting Practice;
- (f) Communications;
- (g) Employee-Engineers.

The council may also from time to time appoint such other committees consisting of members of the council or members of the Association as the council considers desirable to assist it in the management of the affairs of the Association.

**83. (1) The president is ex officio a member of all committees.**

- (2) The vice-presidents and immediate past president are ex officio members of the standing committees.
- (3) The first vice-president shall be the chairman of the Executive Committee.
- (4) Subject to the provisions of the Act, the regulations and the by-laws, each committee shall select its own chairman and shall determine the manner in which meetings of the committee shall be convened and the procedure at meetings.

**84. In addition to the members provided for in section 83, the standing committees shall be constituted as follows:**

- (a) the Executive Committee, of one regional councillor from each region, and one Councillor-at-large;
- (b) the Legislation Committee, of two members of the council and three or more members of the Association appointed by the council;
- (c) the Practice and Ethics Committee, of two members of the council and three or more members of the Association appointed by the council;
- (d) the Professional Development Committee, of two members of the council, and three or more members of the Association appointed by the council;
- (e) the Consulting Practice Committee, of one member of the council and four or more members of the Association appointed by the council;
- (f) the Communications Committee, of one member of the council, and four or more members of the Association appointed by the council;
- (g) the Employee-Engineers Committee, of one member of the council and four or more members of the Association appointed by the council.

**87. The Practice and Ethics Committee shall:**

- (a) advise the council on all matters referred to it in connection with the practice and ethics of the profession;
- (b) provide for informal investigation of any and all complaints referred to it or of any matter which it considers likely to affect the ethical practice of the profession;
- (c) provide to the council or to members advice, assistance and interpretation in matters relating to differences, misunderstandings and alleged breaches of the code of ethics; and
- (d) authorize the issuing of letters of warning, correction, advice or admonition, with the objective of forestalling or preventing actions or practices which might lead to formal complaints.

## CODE OF ETHICS

### GENERAL

- 1. A professional engineer owes certain duties to the public, to his employers, to his clients, to other members of his profession, and to himself, and shall act at all times with:
  - (a) fairness and loyalty to his associates, employers, clients, subordinates and employees;
  - (b) fidelity to public needs; and
  - (c) devotion to high ideals of personal honour and professional integrity.

### DUTY OF PROFESSIONAL ENGINEER TO THE PUBLIC

- 2. A professional engineer shall:
  - (a) regard his duty to public welfare as paramount;
  - (b) endeavour at all times to enhance the public regard for his profession by extending the public knowledge thereof and discouraging untrue, unfair or exaggerated statements with respect to professional engineering;
  - (c) not give opinions or make statements on professional engineering projects of public interest that are inspired or paid for by private interests unless he clearly discloses on whose behalf he is giving the opinions or making the statements.

- (d) not express publicly, or while he is serving as a witness before a court, commission or other tribunal, opinions on professional engineering matters that are not founded on adequate knowledge and honest conviction;
- (e) make effective provisions for the safety of life and health of a person who may be affected by the work for which he is responsible; and at all times shall act to correct or report any situation which he feels may endanger the safety or the welfare of the public;
- (f) make effective provision for meeting lawful standards, rules, or regulations relating to environmental control and protection, in connection with any work being undertaken by him or under his responsibility; and
- (g) sign or seal only those plans, specifications and reports actually made by him or under his personal supervision and direction.

#### DUTY OF PROFESSIONAL ENGINEER TO EMPLOYER

- 3. A professional engineer shall:
  - (a) act in professional engineering matters for each employer as a faithful agent or trustee and shall regard as confidential any information obtained by him as to the business affairs, technical methods or processes of an employer and avoid or disclose any conflict of interest which might influence his actions or judgement;
  - (b) present clearly to his employers the consequences to be expected from any deviations proposed in the work if his professional engineering judgement is overruled by non-technical authority in cases where he is responsible for the technical adequacy of professional engineering work;
  - (c) have no interest, direct or indirect, in any materials, supplies or equipment used by his employer or in any persons or firms receiving contracts from his employer unless he informs his employer in advance of the nature of the interest;
  - (d) not tender on competitive work upon which he may be acting as a professional engineer unless he first advises his employer;
  - (e) not act as consulting engineer in respect of any work upon which he may be the contractor unless he first advises his employer; and
  - (f) not accept compensation, financial or otherwise, for a particular service, from more than one person except with the full knowledge of all interested parties.

#### DUTY OF PROFESSIONAL ENGINEER IN INDEPENDENT PRACTICE TO CLIENT

- 4. A professional engineer in private practice, in addition to all other sections, shall:
  - (a) disclose immediately any interest, direct or indirect, which might in any way be construed as prejudicial to his professional judgement in rendering service to his client;
  - (b) if he is an employee-engineer and is contracting in his own name to perform professional engineering work for other than his employer, provide his client with a written statement of the nature of his status as an employee and the attendant limitations on his services to the client. In addition he shall satisfy himself that such work will not conflict with his duty to his employer;
  - (c) carry out his work in full compliance with the appropriate Performance Standards for Professional Practice as may be published from time to time by the Association of Professional Engineers of Ontario;
  - (d) carry out his work in accordance with applicable statutes, regulations, standards, codes, and by-laws; and
  - (e) co-operate as necessary in working with such other professionals as may be engaged on a project.

#### DUTY OF PROFESSIONAL ENGINEER TO OTHER PROFESSIONAL ENGINEERS

- 5. A professional engineer shall:
  - (a) conduct himself towards other professional engineers with courtesy and good faith;
  - (b) not accept any engagement to review the work of another professional engineer for the same employer except with the knowledge of that engineer, or except where the connection of that engineer with the work has been terminated;
  - (c) not maliciously injure the reputation or business of another professional engineer;
  - (d) not attempt to gain an advantage over other members of his profession by paying or accepting a commission in securing professional engineering work;
  - (e) not advertise in a misleading manner or in a manner injurious to the dignity of his profession, but shall seek to advertise by establishing a well-merited reputation for personal capability; and
  - (f) give proper credit for engineering work, uphold the principle of adequate compensation for engineering work, provide opportunity for professional development and advancement of his associates and subordinates; and extend the effectiveness of the profession through the interchange of engineering information and experience.

#### DUTY OF PROFESSIONAL ENGINEER TO HIMSELF

- 6. A professional engineer shall:
  - (a) maintain the honour and integrity of his profession and without fear or favour expose before the proper tribunals unprofessional or dishonest conduct by any other members of the profession; and
  - (b) undertake only such work as he is competent to perform by virtue of his training and experience, and shall, where advisable, retain and co-operate with other professional engineers or specialists.

APPENDIX VI - ARCHITECTURE

ONTARIO ASSOCIATION OF ARCHITECTS, THE ARCHITECTS ACT 1970 R.S.O. c. 27

**10.—(1) The Board may make regulations,**

- (d) for keeping a register of members of the Association and for issuing certificates of membership under the seal of the Association and calling in such certificates where membership lapses or is cancelled or suspended;
- (f) providing for the discipline and control of members of the Association, including provision for the signing or sealing of drawings and specifications prepared by members of the Association;
- (k) generally for the better carrying out of the powers vested in the Board.

(2) Subject to the approval of the Lieutenant Governor in Council, the Board may make regulations,

- (a) providing for the investigation of any complaint that a member of the Association has been guilty of misconduct or incompetence, so as to render it desirable in the public interest that his membership be suspended or cancelled;
- (b) providing for the cancellation or suspension of the membership of any person found by the Board to be guilty of misconduct or incompetence and for the publication in the public press of notice of such cancellation or suspension and the reasons therefor;
- (c) providing the terms and conditions on which a member whose membership has been cancelled may in a proper case be restored to membership.

(3) A copy of every regulation made under this section shall be furnished to every member of the Association. R.S.O. 1960, c. 20, s. 12, *amended*.

**11. The Council may pass by-laws,**

- (b) instituting and furnishing means and facilities for the promotion of knowledge, proficiency and a high standard of ethics in all things relating to the practice of architecture;

- (h) generally for carrying out the objects of the Association in all matters other than those referred to in section 10, all of which are reserved for regulation by the Board. R.S.O. 1960, c. 20, s. 13.

**13.** It is the duty of each member of the Council to bring before it all complaints of misconduct or incompetence on the part of any member of the Association that may be brought to his attention and it is the duty of the Council to bring before the Board all such cases that in its opinion should be dealt with by the Board, but nothing herein prevents anyone from bringing before the Board any complaints of misconduct or incompetence on the part of any member of the Association. R.S.O. 1960, c. 20, s. 15.

**16.—(1)** Every person who, not being a member of the Association, or who, having been a member, has had his membership cancelled or is under suspension, or who, not being licensed under section 6, applies to himself the term "architect" alone or in combination with any other term, or who holds himself out as an architect, is guilty of an offence and on summary conviction is liable to a fine of not more than \$100 for a first offence and to a fine of not less than \$300 and not more than \$500 or to imprisonment for a term of not more than three months, or to both, for any subsequent offence.

**17.** In the investigation of a complaint against a member of the Association, the Board has all the powers that may be conferred on a commissioner under *The Public Inquiries Act*. R.S.O. 1960, c. 20, s. 19.

**19.—(1)** Anyone whose membership has been suspended or cancelled may, within fifteen days after the date of the order of suspension or cancellation, appeal to the Court of Appeal from such order, and the practice and procedure in such appeal shall be the same as upon an appeal from the judgment of a judge of the Supreme Court presiding at a trial and the Court of Appeal has power to confirm, vary, vacate or set aside such order or to make such other order as it considers just, and to make an order for payment of the costs of the appeal and there shall be no further or other appeal.

(2) Pending an appeal, the person whose membership is suspended or cancelled may continue to practise, but, unless the order of suspension or cancellation is set aside, he shall not practise after the appeal has been disposed of, except that, in the case of suspension, he may practise upon and after the expiry of the period of suspension. R.S.O. 1960, c. 20, s. 21.

ONTARIO ASSOCIATION OF ARCHITECTS, BY-LAWS

COMMITTEES

The Council may appoint such standing and special committees as it may consider necessary and assign duties, and responsibilities, membership and term of office therein as it deems fit.



ONTARIO ASSOCIATION OF ARCHITECTS, REGULATIONS OF THE REGISTRATION BOARD

Firm Practice

- 33 (c) A member shall not continue to engage in the practice of architecture in partnership with a person whose membership has been cancelled or whose membership is under suspension.

**Professional Conduct**

34. A member shall adhere to The Architects Act, R.S.O. 1970 Chapter 27 and the Regulations and By-laws thereunder.
35. A member shall not be a party to any attempt to evade, circumvent or commit a breach of the provisions of The Architects Act, or of the Regulations; a member shall not enter into any arrangement by which anyone not a member may be enabled either directly or indirectly to practise architecture in Ontario.
38. A member shall not make use of services offered by manufacturers, suppliers of building materials, appliances and equipment, or contractors, which may be accompanied by an obligation detrimental to the best interest of his client.
40. A member shall represent truthfully to the public his prospective client and employer his qualifications and capabilities to perform services, and shall not continue in practice if, due to illness or disability, he is prevented from exercising his professional abilities and judgment.
41. A member shall hold in confidence all confidential information given to him by his client or employer.
46. A member shall reply promptly to any letter received from the secretary relating to the professional conduct of such member.
53. A member shall not injure, falsely or maliciously, the professional reputation, prospects or practice of another member.
56. A member shall not use self laudatory, exaggerated or misleading publicity but may present factual material, verbally or visually, which dignifies the profession or advances public knowledge of the architect's function in society.
59. A member shall perform with reasonable skill and good judgment professional services requiring the application of the art and science of architecture in the design, erection and completion of buildings in their entirety, and shall not knowingly contravene or attempt to contravene applicable building laws and regulations.

**Complaints**

61. At its discretion, the Board may suspend or cancel the membership of any member or licensee whom it finds guilty of misconduct or incompetence such as to render it desirable in the public interest that he should be so dealt with.
62. The Board shall not take any such action until after a complaint, setting forth the alleged misconduct or incompetence and giving reasonable particulars, has been made under oath and filed with the secretary of the Board.
63. (a) When a complaint is received, the secretary or the chairman or vice-chairman shall, within seven days thereafter, call a meeting of the Board to consider and act upon the complaint.
- (b) The meeting shall be held not earlier than fourteen days and not later than twenty-one days after the day on which the complaint was received.
- (c) The meeting may be adjourned from time to time.

64. (a) Notice of the meeting, with a copy of the complaint, shall be sent by registered mail to each member of the Board, to the member complained of, at his address shown in the register, and to the person making the complaint.
- (b) The notice to the person making the complaint shall state that he may bring witnesses to substantiate his complaint and that, if he fails to attend the meeting, the matter may be dealt with in his absence.
65. The notice to the member complained of shall state that he will have an opportunity of submitting evidence and calling witnesses in his defence at the meeting and of examining opposing witnesses, and the notice to him shall state that, if he fails to attend, the Board may, in his absence, suspend or cancel his membership.
66. The member and any person complaining may be represented by counsel at the hearing of the complaint and the Board may call in a solicitor or a counsel for assistance and advice.
67. The Board may cause notice of any order of cancellation or suspension to be published in the public press and the reason therefor.
69. These regulations shall not limit the powers of the Board to apply sanctions for misconduct not specifically described.

PROPOSED NEW ARCHITECTS ACT

BOARD

10.--(1) The Registration Board of the Association is continued and, subject to the provisions of this Act and the regulations, shall govern the admission of persons to the Association, the right of persons to continue as members of the Association and to engage in the practice of architecture in Ontario and the discipline of members, and the Board shall consider the manner in which the members are discharging their professional responsibilities to the public. New.

(2) The Board shall be composed of,

- (a) one member of the Association to be appointed by each university, college or other body in Ontario that is by law authorized to grant degrees in architecture and that establishes and maintains to the satisfaction of the Board a faculty, school or department of architecture, provided that in no event shall the number of such appointees exceed two and if there be more than two such universities, colleges or other bodies in Ontario then such universities, colleges or other bodies shall make their appointment in rotation as determined by the Board and each member of the Board appointed under this clause shall hold office for a period of three years from the 1st day of January following his appointment;
- (b) one person who is a barrister and solicitor of at least ten years standing at the Bar of Ontario to be appointed by the Lieutenant

Governor in Council to hold office for a period of three years from the 1st day of January following his appointment;

- (c) a member of the public at large to be appointed by the Lieutenant Governor in Council to hold office for a period of three years from the 1st day of January following his appointment;
- (d) five members to be elected in accordance with the by-laws to hold office for three years from the 1st day of January following their election; and
- (e) the immediate past chairman of the Board ex officio, if the immediate past chairman is not appointed or elected to the Board. R.S.O.1970,c.27,s.8(1),amended.

(3) Any member of the Board not otherwise disqualified is eligible for reappointment or re-election at the expiration of his term, but a member of the Council elected to the Board shall resign his seat on the Council before taking his seat on the Board, and a member of the Board, while in office, is not eligible for election to the Council. R.S.O.1970,c.27,s.8(2).

(4) An elected member of the Board who has served two consecutive three-year terms is not eligible for re-election at the next succeeding election unless immediately prior to the end of his second consecutive term he was the chairman or vice-chairman of the Board.

(5) No elected member of the Board shall hold office consecutively as a member of the Board for more than three three-year terms.

(6) No person shall be appointed or elected to the Board unless he is a Canadian citizen and no person shall continue to hold such office if he ceases to be a Canadian citizen. New.

(7) Every vacancy on the Board caused by the death, resignation or incapacity to act of any member of the Board, if such member was appointed under clause a of subsection 2, shall be filled by the university, college or other body that appointed the dead, resigned or incapacitated member, and if such member was appointed under clause b or c of subsection 2, shall be filled by the Lieutenant Governor in Council, and if such member was elected under clause d of subsection 2, shall be filled by an election held for that purpose and a member of the Board appointed or elected to fill such a vacancy shall hold office only until the expiration of the term of the member so dead, resigned or incapacitated.

R.S.O.1970,c.27,s.8(3),amended.

(8) The administrative costs and expenses incurred by the Board shall be borne and paid by the Council from the funds of the Association. R.S.O.1970,c.27,s.12,part, amended.



## DISCIPLINE

16.- (1) No disciplinary action under section 17 or 18 shall be taken unless,

- (a) a complaint under oath has been filed in the office of the secretary of the Board and a copy thereof has been served on the member, permit-holder or licensee whose conduct is being investigated;
- (b) the member, permit-holder or licensee whose conduct is being investigated has been served at least ten days before the date of the hearing with a notice of the time and place of the hearing; and
- (c) the Board has held a hearing, has heard evidence of or on behalf of the complainant and, if the member, permit-holder or licensee whose conduct is being investigated appears at the hearing and so requests, has heard his evidence and any evidence on his behalf and has reached the decision that he is guilty.  
New.

(2) Notwithstanding anything in The Statutory Powers Procedure Act, 1971, hearings shall be held in camera, but if the member, permit-holder or licensee whose conduct is being investigated requests otherwise by a notice in writing delivered to the secretary of the Board before the day fixed for the hearing, the Board may conduct the hearing in public or otherwise as it considers proper.

(3) The findings of fact of the Board pursuant to a hearing shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of The Statutory Powers Procedure Act, 1971.

(4) There shall be a complaints committee of the Association whose members shall be appointed by the

Board but who shall not be members of the Board and the complaints committee shall, providing clause a of subsection 1 is complied with, or may, if it sees fit, make preliminary investigations and give initial consideration to complaints regarding the professional conduct of members, permit-holders and licensees and shall make a recommendation to the Board in each case as to whether or not the case is a proper one for a hearing by the Board.

(5) Members of the Board holding a hearing shall not have taken part before the hearing in any investigation of the subject-matter of the hearing and shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or his representative other than as members of the Board considering the referral of the matter to or from the complaints committee except upon notice to and opportunity for all parties to participate, but the Board may seek legal advice from an adviser independent from the parties and in such case the nature of the advice shall be made known to the parties in order that they may make submissions as to the law.

(6) No member of the Board shall participate in a decision of the Board pursuant to a hearing unless he was present throughout the hearing and heard the evidence and argument of the parties and, except with the consent of the parties, no decision of the Board shall be given unless all members so present participate in the decision.

(7) The oral evidence taken before the Board at a hearing shall be recorded and, if so required, copies or a transcript thereof shall be furnished upon the same terms as in the Supreme Court.

(8) The member, permit-holder or licensee whose conduct is being investigated and the Association and such other persons as the Board may specify are parties to proceedings before the Board under this section.

(9) At a hearing, the complainant and the member, permit-holder or licensee whose conduct is being investigated have the right to examine the witnesses called by them respectively and to cross-examine the witnesses opposed in interest, including the deponent of an affidavit or statutory declaration submitted in evidence.

(10) A member, permit-holder or licensee whose conduct is being investigated who is a party to a hearing shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.

(11) Documents and things put in evidence at the hearing shall, upon the request of the person who produced them, be released to him by the Board within a reasonable time after the matter in issue has been finally determined.

(12) Except where otherwise provided, any notice, order, decision, reasons for decision or other document required by this Act to be served may be served personally or by registered mail addressed to the person to whom notice is to be given at his latest address appearing in the records of the Association and, where notice is served by registered mail, the service shall be deemed to have been made on the fifth day after the day of mailing unless the person to whom notice is given establishes that he did not, acting in good faith, through absence, accident, illness or other cause beyond his control receive the notice until a later date.

17. Where the Board, after a hearing, finds that a member, permit-holder or licensee is guilty of professional misconduct or has obtained registration as a member or has been issued a permit or a licence by reason of misrepresentation by such member, permit-holder, licensee or a director of the licensee, the Board may by order do one or more of the following:

1. Reprimand such member, permit-holder or licensee.
2. Suspend all the rights and privileges as a member, permit-holder or licensee of such member, permit-holder or licensee for such time as the Board directs in the order and direct that the reinstatement of such membership, permit or licence on the termination of the suspension be subject to such conditions, if any, as the Board considers proper.

3. Cancel the membership, permit or licence of such member, permit-holder or licensee and direct that the name of such member, permit-holder or licensee be struck off the register.

4. Direct that the order of the Board be published in detail or in summary in such manner or medium as the Board considers appropriate in any particular case.

New.

18. If a member or permit-holder has been found pursuant to any Act to be mentally incompetent or mentally ill, or has been found after due inquiry by the Board incapable of engaging in the practice of architecture by reason of age, physical or mental illness including addiction to alcohol or a drug or any other cause, the Board may by order limit or suspend his rights and privileges as a member or permit-holder for such time and on such terms as it considers proper in the circumstances. New.

20. Where it appears that disciplinary proceedings against a member were unwarranted, the Board may order that such costs as it considers just be paid by the Association to the member whose conduct was the subject of the proceedings. New.



21.-(1) An applicant, member, permit-holder or licensee against whom an order or decision has been made by the Board under section 11, 13, 14, 15, 17, 18 or 19 may appeal from the order or decision to the Supreme Court in accordance with the rules of court.

(2) Upon the written request of any person entitled to appeal, the secretary of the Board shall furnish such person with a certified copy of all proceedings, evidence, reports, orders and papers received as evidence in dealing with and disposing of the matter complained of.

(3) Where notice of an appeal is served under this section, the Board shall forthwith file in the Supreme Court the record of the proceedings before it in which the decision or order appealed from was made, which, together with a transcript of the oral evidence before the Board, if it is not part of the record of the Board, shall constitute the record in the appeal.

(4) An appeal under this section may be made on questions of law or fact or both and the court may affirm or reverse the decision or order of the Board or direct the Board to make any decision or order that the Board is authorized to make under this Act, and the court may substitute its opinion for that of the Board.

(5) The court may make such order as to the costs of the appeal as the court considers proper. R.S.O.1970,c.27,s.19(1) amended.

22. Except where a membership, permit or licence is cancelled or suspended for incompetence constituting professional misconduct, a cancellation or suspension does not become effective until any appeal has been finally disposed of or the right of appeal has terminated. R.S.O.1970,c.27,s.19(2),amended.

23. Where a person's membership is cancelled pursuant to section 17, he may apply, not more frequently than once in every twelve months, to be readmitted, and the Board after due inquiry may readmit him as a member or refuse to readmit him but if it refuses to readmit him the Board shall give reasons in writing therefor if requested by the person refused readmission. New.

24. Where the rights and privileges of a member are suspended for a definite or indefinite period, he may apply at any time to have his rights and privileges restored, and the Board after due inquiry may restore his rights and privileges as a member or refuse to restore his rights and privileges but if it refuses to restore his rights and privileges, the Board shall give reasons in writing therefor if requested by the member. New.

25. Upon the readmission of a person as a member or upon the termination of the suspension of the rights and privileges of a member or upon the reprimand of a member, the Board may impose upon him such terms and conditions as it considers proper. New.

#### REGULATIONS

29.--(1) The Board may make regulations,

(a) respecting any matter ancillary to the provisions of this Act with regard to,

- (i) the admission and registration of members,
- (ii) the issuing and recalling of certificates of membership and seals,
- (iii) the keeping of registers of members, honorary members, associate members, student associate members, retired members, permit-holders and licensees,
- (iv) the issuing and recalling of permits,
- (v) the issuing and recalling of licences,
- (vi) the conduct and discipline of members, permit-holders and licensees,
- (vii) the suspension and restoration of the rights and privileges of members, permit-holders and licensees,
- (viii) the cancellation of memberships, permits and licences,
- (ix) the resignation of members, and
- (x) the readmission of former members;

- (b) respecting the classification and admission of honorary members, associate members, student associate members and retired members and respecting the rights, privileges and duties of honorary members, associate members, student associate members and retired members;
  - (c) respecting courses of study, practical training and examinations for admission of members, the fees therefor, and exemptions from such courses of study, practical training and examinations;
  - (d) respecting the signing, sealing, stamping and use by members, permit-holders and licensees of plans, sketches, drawings, specifications and reports prepared by members, permit-holders or licensees;
  - (e) prescribing the fees to be paid on admission and readmission of members to the Association;
  - (f) defining "professional misconduct" for the purpose of this Act and the regulations;
  - (g) prescribing the extent to which the beneficial ownership of the shares of corporations must be held by members in order that licences may be issued to and retained by corporations;
  - (h) prescribing the fees to be paid on applications for permits and licences;
  - (i) prescribing forms for the purposes of this Act and providing for their use;
  - (j) for the election of a chairman and vice-chairman and the appointment of a secretary and such other officers of the Board as it desires and for prescribing their duties and respecting the holding and conduct of meetings of the Board and for fixing the quorum of the Board;
  - (k) generally for the carrying out of the functions of the Board. R.S.O.1970,c.27,s.10(1),amended.
- (2) No regulation is effective until,
- (a) it has been submitted to the members of the Association for approval by means of a mailed secret ballot returnable within thirty days

after the mailing thereof and it has been approved by a majority of those voting within such time; and

- (b) it has been approved by the Lieutenant Governor in Council. New.

#### CODE OF ETHICS

30.-(1) The Board shall prepare and publish from time to time a code of ethics containing standards of professional conduct designed for the protection of the public, which standards members, licensees and permit-holders must subscribe to and follow in the practice of architecture.

(2) Copies of the code of ethics shall be sent to the members, licensees and permit-holders and shall be available free of charge to members of the public who apply therefor. New.



THE ONTARIO ASSOCIATION OF ARCHITECTS, PROPOSED NEW REGULATIONS

**Professional Misconduct**

20. For the purposes of the Act and the regulations, "professional misconduct" means,

- (a) gross negligence;
- (b) infamous, disgraceful or improper conduct in a professional respect, including any violation of the code of ethics prepared and published by the Board pursuant to section 30 of the Act;
- (c) incompetence;
- (d) conviction of a serious criminal offence by a court of competent jurisdiction;
- (e) breach of any provision of the Act or this Regulation.

21. For the purposes of section 20,

- (a) "gross negligence" means any act or omission in engaging in the practice of architecture that shows a reckless or deliberate disregard of or indifference to the rights or safety of others;  
adequate knowledge of, or continued neglect or failure to exercise, the ordinary skills of an architect;
- (c) "serious criminal offence" means,
  - (i) any act committed in Canada that is punishable on indictment under the Criminal Code (Canada), and

(ii) any act that if committed in Canada would be punishable on indictment under the Criminal Code (Canada),

but does not include any political offence committed outside Canada or any offence that does not affect the fitness of an architect to practise his profession.

#### Firm Practice

22.-(1) In this section, "firm" means,

- (a) a partnership in which a member or licensee is a partner and engages in the practice of architecture; or
- (b) a corporation that is a licensee.

(2) A member or licensee shall not engage in the practice of architecture in partnership with a person who is not a member or licensee except where,

- (a) such person is a member or licensee of the Association of Professional Engineers of Ontario or an approved allied profession;
- (b) the partnership's architectural services are performed under the responsibility and supervision of the member.

(3) A member or licensee shall not continue to engage in the practice of architecture in partnership with a person whose membership or licence has been cancelled or whose membership or licence is under suspension.

APPENDIX VII - SAMPLE MEMORANDUM TO O.A.A. MEMBERSHIP

A complaint of misconduct was made against Richard Peter G. Pennington and Robert J. Posliff, both members of the Ontario Association of Architects, by affidavit of Brian Parks, the Executive Director of the Association, sworn on the 10th day of June, 1977. The affidavit contains four charges of misconduct as follows:

- "(a) As members of the Ontario Association of Architects copied the work of another member, contrary to Section 54 of the Regulations of the Registration Board of the Ontario Association of Architects passed pursuant to the provisions of The Architects Act, R.S.O. 1970, Ch. 27.
- (b) As members of the Ontario Association of Architects passed off the work of another member as their own, contrary to Section 54 of the Ontario Association of Architects passed pursuant to the provisions of The Architects Act, R.S.O. 1970, Ch. 27.
- (c) As members of the Ontario Association of Architects copied the drawings of another member, contrary to Section 69 of the Regulations of the Registration Board of the Ontario Association of Architects passed pursuant to the provisions of The Architects Act, R.S.O. 1970, Ch. 27.

- (d) As members of the Ontario Association of Architects passed off the drawings of another member as their own, contrary to Section 69 of the Regulations of the Registration Board of the Ontario Association of Architects passed pursuant to the provisions of The Architects Act, R.S.O. 1970, Ch. 27.

At the hearing, Mr. Parks was called as a witness and gave evidence as to the proceedings which took place with respect to this matter before the Professional Conduct Committee of the Association. Messrs. Pennington and Posliff attended before that Committee voluntarily and provided information to it concerning the matter in question.

Following those proceedings, the present disciplinary proceedings were instituted by Mr. Parks, in his capacity as Executive Director, swearing the above mentioned affidavit of complaint which was then filed pursuant to Regulation 62 with himself in his capacity as Secretary of the Registration Board. A Notice of Hearing together with a copy of the complaint was then delivered to Messrs. Pennington and Posliff and to each of the members of the Board pursuant to Regulation 63.

Following the conclusion of the evidence for the complainant, Mr. Fleming on behalf of the two members charged made a motion for dismissal of the complaint on the ground that the complaint was not made in accordance with the regulations in that Mr. Parks being the Secretary of the Board ought not to have sworn and filed the complaint in his capacity as Executive Director of the Association. As the Board understands Mr. Fleming's argument, it was that the procedure adopted in initiating the complaint had the appearance of impropriety because of the dual capacities in which Mr. Parks acted. Mr. Fleming contended that the effect of what was done deprived the Board of jurisdiction to hear this matter.

The Board concludes that there was no breach of the regulations or of The Architects Act by the procedure followed by Mr. Parks and that the Board's jurisdiction to hear this matter has not been affected by the procedure adopted. The Board concludes that Mr. Parks was entitled to file the complaint as a person coming within the definition of "anyone" in section 13 of the Act,

The procedures followed by the Council in placing these charges of misconduct before this Board for hearing were established several years ago. While it is correct that Mr. Parks occupies the office of Secretary of the Board,

on disciplinary matters he performs no function as Secretary except to convene a meeting of the Board. Under the practice adopted and followed in this case, members of the Board receive no information concerning the matter prior to the hearing except the Notice of Hearing and the sworn complaint. Mr. Parks of course does not participate in any way in the Board's deliberations.

It appears to the Board that as a practical matter, it is appropriate that in disciplinary proceedings Mr. Parks be the formal complainant. In doing so, he is merely carrying out the instructions of the Council of the Association. Without any personal interest in the proceedings, he is able to avoid the type of recrimination which a member such as a member of the Professional Conduct Committee might be exposed to should such member be the complainant.

With the agreement of counsel, the Board reserved its decision on Mr. Fleming's motion. For the reasons set forth above, the Board dismisses the motion.

The evidence is that the architectural firm of Sheldon D. Rosen, Architects and Planners has been retained to provide architectural control criteria for the subdivision development for residential dwellings of a tract of land at Heart Lake, Brampton, known as Villages of Heart Lake. Various members of the firm (hereinafter called "SDR") also sat from time to time as the architectural member of the Architectural Control Committee, which together with a member of the Brampton Planning Department and a member of the subdivider, passed on the architectural design of all buildings to be erected within the subdivision.

Finally, SDR had itself been retained by some builders to design semi-detached houses to be constructed on various locations within the subdivision including The Hilwood Group for whom drawings marked on this hearing as Exhibit 8 were prepared.

On October 19, 1976, following an initial contact on October 17, 1976, Sheldon D. Rosen, the principal of SDR, and his associate, David Wooldridge, both members of the Association, met with one Marrissee, the President of a building company then known as 34189 Ontario Limited and subsequently renamed The Oster Lane Group, to discuss an engagement for the design of semi-detached houses for a number of lots owned by The Oster Lane Group in phase 3 of the Heart Lake Villages subdivision. The evidence is contradictory as to which of the parties first approached the other. Nevertheless, following some negotiations, Marrissee decided not to retain the SDR firm.



Marrisse testified that prior to his meeting with SDR, he had already been negotiating with the firm of Pennington and Posliff Architects and following his discussion with SDR, decided to retain the Pennington Posliff firm with respect to the project. He had worked with that firm on prior occasions.

Marrisse brought in to Pennington and Posliff a set of the drawings, Exhibit 8, which had been prepared for The Hilwood Group by SDR. He testified that the drawings probably came into his possession through a masonry company with which he was associated which was doing construction work in the Heart Lake development. He told Pennington that he wanted houses of the same design because they apparently were selling well.

Pennington testified that Marrisse brought in SDR plans and said he wanted plans for semi-detached houses like them. Pennington told him he should then engage SDR but got the impression that Marrisse was not prepared to do so. Accordingly, Pennington agreed that his firm would take the matter on. He told Marrisse he would have to change the drawings. He said he told Marrisse that plans prepared by his office could be similar but could not be the same as SDR's drawings. He testified it was a matter of judgement on his part as to how much the drawings had to be changed in order not to violate the work of SDR.

Pennington gave the SDR plans to his senior draftsman, John Roach, and instructed him as to changes to be made in order to both satisfy the client and not violate the SDR drawings. He described the SDR floor plan as a very standard type of floor plan and went on to describe to the Board the changes from the SDR plans which were made by Roach under his direction.

Posliff was also involved in the preparation of the plans for The Oster Lane Group and from time to time provided Roach with instructions as to changes to be made. While it was claimed that during the course of the preparation of the plans many sketches had been prepared, only two sketches were produced at the hearing. Neither appeared to have much to do with the plans in issue. Furthermore, there was no evidence of Roach being supplied with anything more than the SDR drawings when he commenced the work.

A copy of the drawings produced by Pennington and Posliff (Exhibit 6) were received by Rosen on January 28, 1977, apparently in his capacity as a member of the Architectural Control Committee. He immediately telephoned Posliff and accused him of copying SDR drawings. Posliff denied the allegation.

The evidence of John Roach was that he had been an architectural draftsman for 14 years and had been in the employ of the Pennington firm for 11 years. He said that the drawings, Exhibit 6, had been prepared by him as draftsman with input from Posliff. He said he was given a copy of SDR's drawings, Exhibit 8, which he used for general sheet layout and basic plan layout. He said that he cut out the Rosen floor plans and sections and arranged them on his drafting board according to his paper size. (It is to be noted that on Exhibit 10, a mounted copy of Exhibit 6(e), the sections are shown at the top of the sheet and the floor plans at the bottom of the sheet, whereas in Exhibit 9, a mounted copy of drawing 6 of Exhibit 8, the position is reversed). He testified that he made a light line layout of the exterior and interior walls of each diagram. He agreed that to that extent, Exhibit 10 was traced from Exhibit 9, that Exhibit 6(b) was traced from Exhibit 8 drawing 12, and that Exhibit 6(d) was traced from Exhibit 8 drawing 9. He also agreed that the dimensions used by him came from the SDR drawings, although he claimed it was coincidence that many dimension lines were in the same location on his drawings. Finally, he admitted copying with insignificant changes substantial portions of the general notes on Exhibit 8.

Both Pennington and Posliff denied knowing that Roach had traced the SDR drawings and denied ordering him to do so, although both admitted they were fully aware that he was using the SDR drawings as a model for his work.

Evidence was led on behalf of the complainant of the appearance of ghost lines on some of the Pennington and Posliff drawings in the same position as existing lines on the SDR drawings. Ghosting was described as the incomplete erasure of lines on a drawing. Errors on the SDR drawings were also carried forward onto the Pennington and Posliff drawings.

Significant evidence was given by Ralph M. Goldman, a member of the Association, who identified two sets of drawings, Exhibits 16 and 17, which had been prepared by his firm a considerable time before the preparation of the SDR drawings. The drawings, Exhibit 17, had in fact been prepared for The Hilwood Group for a project in Mississauga. Goldman testified that Exhibits 16 and 17 had been conceived by him and developed over a number of years. He described Exhibit 17 as very standard plans, of a kind which he sees all the time. In making a design comparison of his plans with those of SDR and Pennington and Posliff with respect to one particular building, he testified that his plans had no similarity in elevations but that the ground floor plan of the SDR drawing was more similar to his than to the

Pennington and Posliff plan, and the basement plan was very similar in all cases. The SDR upper floor plan was more similar to the Pennington and Posliff plan than to his.

Both Wooldridge and Rosen testified that Exhibit 8 had been specifically prepared from design and other parameters provided by The Hilwood Group and also reflected modifications made at the request of the client from time to time. Specifically, Rosen testified that the drawings were the result of the skill and ingenuity of his firm developed over the years and that the only material used in the preparation of the drawings was material owned by his firm or in which he had copyright. Wooldridge claimed authorship for the notes which he testified had been developed by him over the years. Finally, both denied obtaining any assistance from Goldman's drawings, Exhibits 16 and 17, although neither denied the possibility of having seen those drawings before preparing Exhibit 8.

It is the finding of the Board that Pennington and Posliff, through their senior draftsman, Roach, did copy substantial portions of the SDR drawings, Exhibit 8. It is the Board's opinion that whether or not Pennington and Posliff were aware that portions of the drawings were traced, they were certainly aware and it was their intention that the drawings were to be copied with changes afterwards being made which in their opinion differentiated them from Exhibit 8.

The Board doubts Rosen's claim that the original architectural design of the plans in question came solely from his office. The design is a common type and at least one other architect, Goldman, had developed essentially the same floor plan several years earlier for The Hilwood Group, the same client for whom Mr. Rosen claimed he originated the same concept. However, the Board is satisfied that in preparing Exhibit 8, the SDR firm did exercise mental effort, labour and skill to develop the compilation evidenced by Exhibit 8.

Notwithstanding the fact that similar plans of this type had been in existence for many years prior to the preparation of Exhibit 8, and notwithstanding the design criteria established by SDR for the Architectural Control Committee which severely limited architectural freedom, the Board is satisfied on the evidence that Pennington and Posliff did not rely upon a common source of information for preparation of Exhibit 6 but instead merely copied Exhibit 8, making only as many changes as they thought necessary to avoid a breach of Regulation 54. However, it is the Board's decision that Exhibit 6 is in substantial respects a copy of Exhibit 8.

The Board therefore finds that Messrs. Pennington and Posliff are guilty of the charge contained in paragraph 5(a) of the complaint.

Having found that Messrs. Pennington and Posliff in preparing Exhibit 6 substantially copied Exhibit 8, the work of SDR, and having placed their seal on Exhibit 6 and circulated it, the Board is driven to the inescapable conclusion that in doing so, they passed off the work of SDR as their own notwithstanding the changes which they effected to Exhibit 6. The Board therefore finds Messrs. Pennington and Posliff guilty on the charge outlined in paragraph 5(b) of the complaint.

Counsel for the complainant advised the Board that charges 5(c) and 5(d) were included in the complaint to cover the possibility of the Board deciding that "work" in Regulation 54 did not include the preparation of architectural plans. In view of the Board's decision that architectural plans such as Exhibit 8 are included within the definition of "work" in Regulation 54, the charges contained in paragraphs 5(c) and 5(d) of the complaint are hereby dismissed.

#### REASONS CONCERNING PENALTY

This is the first occasion upon which a complaint has been heard by the Board concerning a breach of Regulation 54. The Board considers the copying of a member of another member's work to be a matter of serious concern, while at the same time, it recognizes that in each case the seriousness of the offence must be weighed against the extent of the copying which occurred and the nature of the work copied.

While the Board found the members guilty of two breaches of Regulation 54, a penalty in itself, the Board does not consider the facts of this case justify the more serious penalty of suspension or cancellation, nor would the public interest be served thereby.

The Board, however, orders that a copy of its Reasons for Decision and the Reasons concerning Penalty be provided to the membership of the Association upon this decision becoming final.<sup>153</sup>



APPENDIX VIII - EXCERPTS FROM REPORTS OF COLLEGE OF PHYSICIANS  
AND SURGEONS OF ONTARIO

INTERIM REPORT, February, 1977, OF THE COLLEGE OF PHYSICIANS AND SURGEONS  
OF ONTARIO. (Excerpts)

*The College of Physicians  
and Surgeons of Ontario*  
**REGISTRATION  
STATISTICS**  
at December 31, 1976

NUMBER OF MEMBERS  
ON THE REGISTER

|                   |        |
|-------------------|--------|
| December 31, 1971 | 12,558 |
| December 31, 1972 | 13,340 |
| December 31, 1973 | 13,932 |
| December 31, 1974 | 14,472 |
| December 31, 1975 | 14,951 |
| December 31, 1976 | 15,461 |

Table I REGISTRATIONS IN ONTARIO 1971-1976

| Year | Graduates from<br>Canadian<br>Universities | Graduates from<br>U.K. Australia<br>NZ S.A. | Graduates from<br>Universities in<br>U.S.A. | Graduates from<br>Other<br>Universities | Learned without<br>having sat the<br>M.C.C. Exams | Total |
|------|--|---|---|---|---|-------|
| 1971 | 500  | 203   | 20  | 229                                     |   | 952   |
| 1972 | 523  | 227   | 20  | 264                                     |   | 1024  |
| 1973 | 529  | 177   | 22  | 167                                     |   | 895   |
| 1974 | 513  | 192   | 15  | 154                                     |   | 874   |
| 1975 | 513  | 193   | 14  | 116                                     |   | 836   |
| 1976 | 552  | 157   | 25  | 139                                     |   | 873   |

REGISTRATIONS BY SOURCE OF MEDICAL EDUCATION

| Year | Ontario |       | Other Provinces |       | U.K. and Ireland |       | And NZ S.A.<br>and U.S.A. |       | Other Countries |       | Total |
|------|---------|-------|-----------------|-------|------------------|-------|---------------------------|-------|-----------------|-------|-------|
|      | G.P.    | Spec. | G.P.            | Spec. | G.P.             | Spec. | G.P.                      | Spec. | G.P.            | Spec. |       |
| 1971 | 332     | 10    | 136             | 22    | 161              | 16    | 45                        | 1     | 172             | 57    | 952   |
| 1972 | 349     | 10    | 143             | 21    | 174              | 27    | 40                        | 6     | 166             | 88    | 1024  |
| 1973 | 385     | 17    | 111             | 16    | 129              | 20    | 43                        | 7     | 121             | 46    | 895   |
| 1974 | 399     | 3     | 96              | 15    | 151              | 12    | 43                        | 1     | 130             | 24    | 874   |
| 1975 | 378     | 10    | 112             | 13    | 164              | 10    | 32                        | 1     | 91              | 25    | 836   |
| 1976 | 432     | 6     | 106             | 8     | 117              | 9     | 50                        | 6     | 109             | 30    | 873   |



Table III

### ERASURES

| Year | DEATH |      | RETIREMENT        |      |                       |      | FOR DUES |      | FOR CAUSE |      | Total |
|------|-------|------|-------------------|------|-----------------------|------|----------|------|-----------|------|-------|
|      | G P   | Spec | In Ontario<br>G P | Spec | Out of Ontario<br>G P | Spec | G P      | Spec | G P       | Spec |       |
| 1971 | 48    | 30   | 21                | 13   | 73                    | 44   | 46       | 22   | 1         | 0    | 301   |
| 1972 | 49    | 39   | 31                | 10   | 94                    | 54   | 20       | 9    | 3         | 3    | 312   |
| 1973 | 59    | 55   | 45                | 15   | 77                    | 80   | 24       | 10   | 1         | 2    | 368   |
| 1974 | 39    | 38   | 37                | 20   | 141                   | 78   | 35       | 21   | 0         | 1    | 410   |
| 1975 | 53    | 42   | 41                | 19   | 122                   | 79   | 43       | 12   | 2         | 2    | 415   |
| 1976 | 64    | 44   | 49                | 23   | 111                   | 74   | 42       | 27   | 2         | 0    | 436   |

Table IV

### GAIN OR LOSS

| Year | New<br>Registrations | Re-<br>Registrations | Erasures | Net gain<br>(loss) |
|------|----------------------|----------------------|----------|--------------------|
| 1971 | 952                  | 79                   | 301      | 730                |
| 1972 | 1024                 | 70                   | 312      | 782                |
| 1973 | 895                  | 65                   | 368      | 592                |
| 1974 | 874                  | 76                   | 410      | 540                |
| 1975 | 836                  | 58                   | 415      | 479                |
| 1976 | 873                  | 73                   | 436      | 510                |

Table V

### REGISTRATIONS ON THE SPECIAL REGISTER

| Year          | Classification      |                      |                              |                                     |                                 |                      | Total |
|---------------|---------------------|----------------------|------------------------------|-------------------------------------|---------------------------------|----------------------|-------|
|               | Academic<br>Licence | Temporary<br>Licence | Public<br>Service<br>Licence | Under-<br>served<br>Area<br>Licence | Hospital<br>Practice<br>Licence | Specified<br>Licence |       |
| 1976 New      |                     |                      |                              |                                     |                                 |                      |       |
| Registrations | 22                  | 66                   | 20                           | 14                                  | 15                              | 0                    | 137   |
| Renewals      | 138                 | 179                  | 65                           | 124                                 | 51                              | 70                   | 627   |
| TOTAL         | 160                 | 245                  | 85                           | 138                                 | 66                              | 70                   | 764   |
| Resignations  | 14                  | 195                  | 11                           | 13                                  | 11                              | 22                   | 266   |
| TOTAL         | 146                 | 50                   | 74                           | 125                                 | 55                              | 48                   | 498   |

## POLICY RE: DISCIPLINE PROCEEDINGS, p. 5

The Council clarified its intent with respect to three areas in respect to discipline committee proceedings

- (1) The Discipline Committee will be scheduled on an as-sizes basis, with week-long meetings in the first week of February, April, June, October and December of each year, with additional sittings to be arranged as required.
- (2) The College made a statement of policy that no agreements with respect to plea bargaining in cases before the Discipline Committee will be considered by the College
- (3) The College will publish the names of all physicians found guilty of professional misconduct by the Discipline Committee unless a specific direction to the contrary in an individual case is given by the Discipline Committee at the time of determination of the penalty

## Complaints Committee Activities, p. 5

It is now eighteen months since the promulgation of the Health Disciplines Act and preliminary assessment of the impact of this Act on the Complaints Committee may now be attempted.

There is no question that there has been a significant increase in the number of complaints and inquiries being received by the College. Evidence of this may be seen in 1975 there were 68 complaints that were considered by the Complaints Committee, subsequent to July, 1975, while in the first ten months of 1976 there were 234. Of these, 162 cases (69%) were dismissed, 45 cases (19%) were dismissed with admonishment, caution, warning or suggestion, 19 cases (8%) were referred to Discipline, 4 cases (2%) were referred elsewhere, and 4 cases (2%) were deferred.

The Health Disciplines Board, up until November 12, 1976 had had 79 cases referred for consideration of complaints dismissed by the Committee. Of the 42 cases on which a decision has been received by the College, the Board confirmed the decision of the Complaints Committee in 34 cases (81%), while 8 cases (19%) were referred back to the College for further consideration.

Of these cases, the original motion was reaffirmed in 4, one was referred to the Executive Committee, one to the Discipline and two were deferred pending the receipt of further information.

Certain grounds for complaint tend to recur, and among those most frequently received are

- Concerned with breaches of confidentiality with special reference to a marriage counselling situation. When both spouses attend a physician for such counselling, one or other may cease to attend. At a later date, if separation or divorce proceedings are instituted, the doctor may be asked for a medical report by the solicitor of the spouse who has continued as his patient. Should he, in his report, provide information he had obtained when the other spouse attended him as a patient, it is almost sure to result in a complaint being lodged with the College. Under such circumstances, it is suggested that a medical report be provided without the written consent of both spouses.
- Lack of adequate explanation of a proposed method of treatment, the results to be anticipated, and the expected period of disability.
- Lack of communication between doctor and patient, or patient's family, regarding a patient's progress, especially in cases not progressing favourably.
- Failure on the part of the physician and/or members of his office staff, to provide an appropriate, courteous explanation for delayed or cancelled appointments, delay in provision of medical reports, and providing summaries or transcripts of a patient's records to another physician.
- Failure to respond in a reasonable time to a lawyer's request for a medico-legal report on behalf of a patient.
- Failure to provide in a reasonable time, reports required by the Workmen's Compensation Board.

- Failure to notify a patient, in advance of the treatment being rendered, of the amount of the fee to be charged in excess of the O.M.A. Schedule of Fees.
- Failure to notify patients of a doctor's policy regarding his charges for missed appointments and then charging for such a missed appointment.
- Problems relating to group practices, either in partnership, expense-sharing arrangements, or assistantships, when one or more members elect to leave such a group, in which specific written agreements have not initially been drawn up with regard to financial matters and ownership of patients' records.

There are some of the problems frequently brought to the attention of the College and it may be seen that most of them involve a failure in communication.

Traditionally, the College has not acted in the role of mediator between disputants. It may be noted, however, that of the 304 complaints received between January 1, 1976 and November 12, 1976, 102 cases (40%) were resolved within the Complaints Department and 148 cases (60%) had to be reviewed by the Committee. In addition, 237 communications were received and labelled as inquiries, many of which might have become complaints unless the College had been able to provide a satisfactory explanation.

The role of the Complaints or Mediation Committees of local Academies of Medicine and Clinical Societies was discussed at a special meeting of the Ontario Medical Association at its annual meeting in the Spring of 1976. The College feels that many complaints may best be dealt with at the local level, but it must be stated that it is not possible for a complaint, once brought to the attention of the College, to be referred back to a local society. On the other hand, if a Clinical Society or Academy of Medicine feels that it is unable to resolve a problem, it is quite proper for it to refer it to the College for appropriate investigation.

### CARDIOPULMONARY RESUSCITATION

The College has endorsed and encouraged the establishment and promotion of a training and certification program in cardiopulmonary resuscitation by the Ontario Heart Foundation and the Ontario Medical Association. Having received and reviewed the report and recommendations of the OHF-OMA Joint Committee, the Committee on Special Procedures also recommended, and the Council approved, basic life support cardiopulmonary resuscitation as a first aid procedure. Individuals performing basic life support procedures, will therefore, not be engaged in the practice of medicine under the provisions of Section 52 of the Health Disciplines Act, 1974.

Basic life support includes the recognition of an airway obstruction, respiratory arrest and cardiac arrest, the opening and maintaining of a patent airway, and providing artificial circulation by means of external cardiac compression. Basic life support does not include the use of intravenous fluids, drugs, and defibrillation.

## Report of the Discipline Committee, p. 7

### 1. Dr. Yat Tung Tse

Dr. Tse was charged with professional misconduct in that it was alleged that in the years 1974 and 1975 or a part thereof, he referred a number of patients to ABKO Medical Laboratories Limited in return for which he accepted money and/or other valuable consideration which was paid by the laboratory, all of which, having regard to all the circumstances existing herein, constituted professional misconduct.

Dr. Tse attended, represented by counsel and pleaded not guilty.

In this case, a Statement of Facts as agreed upon was presented by counsel in which Dr. Tse admitted referring patients to the laboratory during the period in question, he admitted that his referrals enabled the laboratory to bill OHIP in 1974 about \$20,000.00 and in the first 9 months of 1975 a little in excess of \$13,000.00. Dr. Tse also admitted that in April 1974 ABKO paid to him by cheque the sum of \$1,000.00 and that in the year 1975 ABKO paid on his behalf a gardening bill of \$76.00 with respect to the residence of his alleged former wife, that ABKO paid to Surgo Surgical Supply \$91.90, that the lab paid to Sands Pharmaceuticals the sum of \$57.50, that the lab paid to Anca Laboratories \$180.00, that the lab paid to The Maritime Life Assurance Company a premium payment of \$376.29, that the lab paid to Star Fuels the sum of \$1,525.79 with respect to fuel oil delivered to an apartment building at 122 Dowling Avenue, Toronto, which was owned by a company in which Dr. Tse was a principal shareholder, and that all of these cheques were recorded in the books of the lab under a section entitled "Advertising and Promotion Expenses". The bookkeeper of the lab, who was called as a witness for the College, testified that the lab credited to the account of Dr. Tse 15% of whatever revenue his patients generated to the lab for each month and that Dr. Tse was well aware of these credits.

In defence, Dr. Tse stated that in April of 1974 he had paid to the lab the sum of \$1,700.00. On cross-examination, his evidence was not clear as to whether this \$1,700.00 payment was in repayment of two cheques paid by the lab to him in 1973, one being for \$1,000.00 and the other being for \$700.00, or whether this was repayment of \$1,000.00 that the lab had paid to him earlier in 1974 plus \$700.00 for medical supplies that the lab had acquired on Dr. Tse's behalf or whether this cheque represented a payment on a condominium project that the principals of the lab were endeavouring to develop. In general, Dr. Tse's evidence on cross-examination was very evasive and he endeavoured to show that all of the monies that had been paid on his behalf had in fact been repaid to the laboratory and indeed there was evidence to the effect that in March of this year, Dr. Tse had given a cheque to the lab and the company in which he had an interest had also given a cheque to the lab, which mathematically would balance all payments that the laboratory had theretofore made on

Dr. Tse's behalf. These latter payments upon examination however were indeed suspect and it appeared as though Dr. Tse was endeavouring to put himself back in good standing by the delivery over of those cheques.

In substance, Dr. Tse took the position that all payments that the lab had made on his behalf were in the nature of a loan, that he was hardpressed for money at the time and that Mr. Abersek of the lab had agreed to make these payments on Dr. Tse's behalf. It transpired on cross-examination however that there was no evidence of a loan, aside from Dr. Tse's statements which were not corroborated by any other witness and the transaction had none of the earmarks of a loan inasmuch as there was no promissory note, no agreement that interest should be paid, no acknowledgement in writing of the loan of any kind, nor any correspondence from one party to the other confirming the transaction as being a loan. In the circumstances, the Committee deliberated and determined that the monies that had been paid on Dr. Tse's behalf were indeed as the result of credits that he had built up in the laboratory by reason of having referred patients to it and that these credits were utilized by him to his own advantage. In the opinion of the Committee, this constituted professional misconduct and the Committee found Dr. Tse guilty of professional misconduct.

After hearing representations with respect to penalty from respective counsel, the Committee further deliberated and directed that Dr. Tse be suspended from the Register of the College for a period of six months. Dr. Tse has filed an appeal.

### 2. Dr. Jaroslav Vanek

Dr. Vanek was charged with professional misconduct in that it was alleged that in the years 1974 and 1975 or a part thereof, he referred a number of patients to ABKO Medical Laboratories Limited in return for which he accepted money, and/or furniture which was paid by ABKO Medical Laboratories Limited, all of which having regard to all the circumstances existing herein constituted professional misconduct.

Dr. Vanek appeared, represented by counsel and pleaded not guilty.

The evidence presented indicated that in the month of December 1975, Dr. Vanek had ordered a dining room table from the Art Shoppe which cost \$1,149.75, of which \$200.00 was paid by way of a cheque of ABKO Medical Laboratories Limited dated December 4, 1975, the balance of \$949.75 being paid by way of a cheque of ABKO Medical Laboratories Limited dated December 15, 1975. The bookkeeper in her evidence stated that in the first 9 months of the year 1975, Dr. Vanek had referred patients to the laboratory which generated a total of \$4,662.00 in revenue to the lab, of which Dr. Vanek was credited with a commission of 15%.

In defence, Dr. Vanek stated that he first met Mr. Abersek, who is one of the principals of the laboratory, in July 1975 and that as a result of this meeting he began referring patients to the lab for tests. Dr. Vanek further stated that around mid-



November or early December 1975 in one of his conversations with Mr. Abersek, he mentioned the high costs of everything and apparently the conversation moved to the point where Dr. Vanek had mentioned that he had seen a dining room table that he liked to purchase and furnish in his new home but that he had been unable to afford it. Thereupon Mr. Abersek indicated that he would help out Dr. Vanek and according to Dr. Vanek, Mr. Abersek indicated that he could go ahead and purchase the table and that the lab would pay for it and that Dr. Vanek could repay the lab in a couple of months. In fact, shortly after the newspaper story about the laboratory, it seems that Dr. Vanek, according to his evidence, scrambled and was able to assemble enough money, mainly from his wife's bank account, to repay to the lab the money which it had paid to the Art Shoppe for the purchase of the dining room table.

In cross-examination, Dr. Vanek however admitted that aside from his statement that this transaction was a loan, there was nothing else to support a loan, namely, no promissory note, no rate of interest charged on the loan, no acknowledgment of the loan, no letter from either party confirming that this transaction was a loan, and in the circumstances, including the fact that Dr. Vanek hurried to repay to the lab the monies which it had earlier paid after the newspaper story had broken out, the Committee decided that the transaction was such that it did not fall within a loan but instead, it was a payment made by the lab on Dr. Vanek's behalf out of a credit that he had built up at the laboratory by reason of having referred to it a number of patients for tests over the past few months. Accordingly, Dr. Vanek was found guilty and directed to be reprimanded.

### 3. Dr. ....

Dr. .... attended before the Discipline Committee of the College of Physicians and Surgeons of Ontario on June 23, 1976 represented by counsel, charged with professional misconduct for having failed to maintain the standard of practice of the profession in connection with his performing circumcision procedures on a young patient. The evidence indicated that Dr. .... had attempted the circumcision firstly using a circumcision clamp, which procedure failed due to the formation of excessive scar tissue at the circumcision site with resulting phimosis. A second procedure was undertaken using the plastibell method and this procedure failed for apparently the same reasons as the first procedure performed by Dr. .... The witnesses for the College included the child's mother and the urologist who was finally successful in completing the circumcision procedure properly. In the view of the Discipline Committee, the evidence presented on behalf of the College was not sufficient to establish the charge of professional misconduct and accordingly the charge was dismissed.

### 4. Dr. ....

Dr. .... was charged with professional misconduct in that in or about the month of November 1975, while having a patient under his care he pressured her into revealing to her husband an extra-marital affair and in so doing failed to

maintain the standard of practice of the profession, contrary to the applicable regulation.

Dr. .... attended by counsel and pleaded not guilty to the charge.

Essentially, there was not any real dispute as to the relevant facts herein. It appeared that Dr. .... had been treating the husband of the complainant about twice a week for about a one year period for psychotherapy and during the course of that treatment, Dr. .... decided it would be helpful if the patient's wife received psychiatric counselling. An appointment was therefore made for the wife, the complainant, to attend at Dr. .... office for the purpose of recommending to her an independent psychotherapist and it was during the course of this visit that the wife indicated to Dr. .... that she had been engaged in an extra-marital relationship but that she did not wish this information to be passed on to her husband.

Subsequently, Dr. .... invited the wife to attend at his office for further discussion and it was on this second attendance that he expressed his opinion that the problems which the couple were having might be better resolved if the wife told her husband of her extra-marital relationship. The wife in her evidence stated that she initially rejected this suggestion strongly but that Dr. .... had intimated to her that if she did not tell her husband, he would. As a result, the complainant feeling that her husband might accept the information better from her than from the doctor, confided in her husband on the same evening with disastrous results to her and her relationship with her husband.

In defence, Dr. .... stated that the wife had placed him in an impossible situation by disclosing to him her extra-marital affair and that he could not proceed with psychotherapy sessions with the husband, because to do otherwise would be party to a deception which, according to Dr. .... is unthinkable in a therapeutic relationship. Dr. .... denied that he pressured the wife into revealing the relationship to her husband and stated that in the ongoing therapy sessions with the husband, he, Dr. .... could not promise to conceal the information that she had imparted to him. He further stated that to continue treating the husband without him knowing of his wife's infidelity would have been unsatisfactory and if pressure was exerted upon the wife, Dr. .... felt that it was in the patient's best interests.

There was expert evidence called by the College and by Dr. .... and it is rather interesting to note that the expert, called on behalf of the College, indicated quite clearly that in his opinion it was wrong of Dr. .... to pressure the wife into revealing her extra-marital relationship. He felt that Dr. .... had a number of alternatives open to him, namely, he could terminate the doctor-patient relationship with the husband, he could carry on the therapy sessions as before, keeping the information which he had acquired confidential, he could see both the husband and wife together and possibly arrange the discussion in such a manner that the wife would eventually reveal her infidelity to the husband or he could continue to work with the husband and wife

together in the expectation that the joint session would bring the couple back together without the husband being any the wiser.

The expert witness called on behalf of the defence was of the opinion that secrets as between husband and wife in therapy sessions of this nature cannot be maintained, that to withdraw as the physician for the husband would be damaging and that in some tactful way, it was incumbent upon Dr. [redacted] to have the disclosure of the wife's infidelity made to the husband.

Another expert witness called on behalf of the defence presented some rather startling views with respect to when a person became a patient in psychotherapy sessions and the information that could be disclosed by the therapist, vis-a-vis, husband and wife. It was his view that all information is to be shared with the patient where a husband-wife relationship is involved, no matter what the source of the information.

After hearing all the evidence presented and the submissions of respective counsel, the Committee deliberated and because of the evidence of expert psychiatric witnesses, concluded that the charge of professional misconduct had not been proven to its satisfaction and the charge was therefore dismissed.

#### 5. Dr. Andrew Russell McGee

Dr. Andrew Russell McGee attended before the Discipline Committee of the College of Physicians and Surgeons of Ontario on June 22, 1976 and pleaded guilty of professional misconduct in that he falsified a document in order to make it appear that an inadequate diagnosis had not been made, and to the same end engaged in fraudulent deception. The Discipline Committee accepted the plea of guilty made by the doctor and directed that he be reprimanded.

#### 6. Dr. Patrick Joseph McDermott

Dr. McDermott from Windsor was charged with professional misconduct in that in the period from January 1972 to January 1975 or a part thereof, he permitted, counselled or assisted two physicians who were licensed under Part III of The Health Disciplines Act to practise medicine in contravention of the terms and conditions of their licences.

Dr. McDermott did not appear and initially a plea of not guilty was entered on his behalf.

Evidence however was heard from the two physicians holding Temporary Licences which indicated that each of them held these licences issued on the basis of certificates of employment signed by Dr. McDermott. It was clear on the evidence that Dr. McDermott did not even occupy the same building from which the physicians conducted their practice of medicine which for all intents and purposes was completely separate and apart and independent of the medical practice conducted by Dr. McDermott.

In the circumstances, the Committee found Dr. McDermott guilty of professional misconduct and since the indication was that he was no longer in the Province of Ontario, the Committee directed that Dr. McDermott be suspended from the Register of the College of Physicians and Surgeons of Ontario until

the expiry of his current licence, nor shall his current licence be renewed until he appears before the Discipline Committee to be reprimanded.

#### 7. Dr. Anne Gergely

It was alleged that Dr. Anne Gergely had received a small refrigerator and a portable dishwasher which had been paid by ABKO Medical Laboratory. The evidence presented indicated that a cheque for \$551.48 had been drawn by the laboratory in favour of Bad Boy Appliances as payment of a refrigerator and dishwasher. Dr. Gergely in defence took the position that the two articles had not been used personally and had not been delivered to her house but instead were delivered to the office and only one of the articles, namely, the refrigerator was in fact used, the dishwasher apparently not being suitable for the water fittings in her office. She conceded however that once the publicity broke out in the newspaper as to the problems with the laboratory, she then took steps to see that the articles were returned to the laboratory. The Committee was not prepared to accept this defence and after deliberation found Dr. Gergely guilty of professional misconduct and directed that she be reprimanded. Dr. Gergely waived the right of appeal and the reprimand was accordingly delivered by the Chairman.

#### 8. Dr.

It was alleged that Dr. [redacted] had received a valuable decorative vase in return for patients that he had referred to ABKO Medical Laboratory. In this case, it transpired that the College was not able to positively prove that Dr.

[redacted] had accepted a vase from the laboratory and in fact Dr. [redacted] testified in his own defence stating that he was unaware of the existence of the vase until it had been delivered to his apartment, save and except for an earlier conversation that he had with his wife in which she indicated that she had a conversation with one of the directors of the laboratory, and had indicated to him that she would like to have a decorative vase which was then on display at Green's Antique Store on Yonge Street, Toronto. Dr. [redacted] stated that when he heard of this proposal, he suggested to his wife that she have nothing to do with it, but subsequently it transpired that indeed a vase was delivered to the apartment and accepted by Mrs. [redacted], apparently as a kindly gesture on the part of the laboratory that Dr. [redacted] might locate a second office in the building in which the laboratory was located and in which the director of the laboratory seemed to be acting as somewhat of a rental agent. Mrs. [redacted] testified on behalf of her husband and stated unequivocally that all of the arrangements were made directly with her, that her husband, save and except for the aforesaid conversation, had no knowledge of the proposal and that at the time she saw nothing wrong in accepting the decorative vase from the laboratory. The purchase price of the vase was \$185.00 plus tax and this expenditure was proven with the production of copies of cheques from the laboratory made payable to the antique store. However, in view of Mrs. [redacted] evidence which was not shaken on cross-examination, the Committee accordingly dismissed the charge.



#### 9. Dr. Peter Mostrokol

Dr. Peter Mostrokol was charged with professional misconduct, in that he received money from ABKO Medical Laboratory. Dr. Mostrokol appeared, not represented by counsel. The evidence indicated that Dr. Mostrokol in September 1976 had received a cheque from the laboratory for \$60.00 and had cashed it. There was evidence that he had been referring some patients to the laboratory for tests and this cheque, according to the bookkeeper of the laboratory testified that it was in payment of commissions for work referred to the lab.

In defence, Dr. Mostrokol took the position that back in early 1969 he was instrumental in initiating the idea of the laboratory but had a falling out with Mr. Abersek who wished to assume control and Dr. Mostrokol stated that he thought that this payment of \$60.00 was a payment by Mr. Abersek to him of a debt which he calculated to be owing to him by Mr. Abersek in return for services that he, Dr. Mostrokol, had rendered in initially setting up the laboratory. However, there was no documentation to support the doctor's position and there was nothing on the cheque indicating that it was in part payment of work performed back in 1969. Accordingly, the Committee felt constrained to accept the evidence of the bookkeeper that this payment was indeed in the form of commission and found Dr. Mostrokol guilty of professional misconduct and directed that he be reprimanded.

#### 10. Dr. Brian Alexander Nixon

Dr. Nixon was charged with professional misconduct in that as the anaesthetist supervising a patient, during a surgical procedure at Peel Memorial Hospital on June 25, 1975, he failed to take proper precautions to ensure that the equipment to be used for administering the anaesthetic to the patient was in proper working order before he began to administer the anaesthetic.

Dr. Nixon attended, represented by counsel and pleaded not guilty to the charge.

There was no real dispute here between counsel for the College and counsel for Dr. Nixon as to the facts. It appeared that the patient was scheduled for surgery of a bunion on her great right toe, the operation to start on the morning of June 24, 1975. The uniqueness of the occurrence was the anaesthetic equipment in use, namely, the usual hoses were attached to the anaesthetic equipment and the other end of the hoses were hooked up to what is known as an Ohio swivel mount. It had been the custom of the hospital to have the valves in this swivel mount removed therefrom, with valves in the anaesthetic machine only. It transpired however that the Ohio swivel mount which was provided for this patient's procedure had been sent out for repair, returned by the manufacturer with the hospital personnel being of the opinion that as in past instances, the swivel mount was returned without valves therein but apparently without anyone checking to see whether or not valves were in the swivel mount. It occurred that indeed this is what happened and the valves were located in the wrong order, so that when the anaesthetic gases were turned on at the machine, none flowed through to the face mask. Dr. Nixon stated that it had been his pattern of practice

to test all equipment before applying it to the patient and in this instance he was certain that he conducted the usual order of tests, which was to inflate the bag on the anaesthetic machine and if the gases flowed through then the bag would gradually deflate. However, for some reason unexplained, Dr. Nixon did not watch to see whether or not the bag deflated and proceeded to apply the mask to the patient's face and shortly thereafter encountered trouble in the administration of anaesthesia. The administration of thiopentone was commenced with an endotracheal intubation being carried out five minutes later. The endotracheal tube was changed in that Dr. Nixon thought that possible there was some blockage in the tube. It was not until another physician bronchoscoped the patient and satisfied himself that there was no blockage in the tube, that attention was drawn to the anaesthetic equipment, when the point of obstruction was identified as being a wrong valve being placed in the Ohio swivel mount. The patient had a cardiac arrest but was revived and transferred to the intensive care unit where however, due to the cerebral effects of anoxia, she died the following day.

Dr. Nixon admitted that as the anaesthetist he was the person in charge of the anaesthesia equipment and the one responsible for ensuring that it was in proper working order.

Two experts called on behalf of the College, stated their understanding of the standard of practice of the medical profession in preparing for the administration of anaesthesia. In view of their evidence and the admissions of Dr. Nixon, the Committee concluded that Dr. Nixon was indeed guilty of professional misconduct and so found. He was directed to be reprimanded. Dr. Nixon waived his right of appeal and the reprimand was delivered.

#### 11. Dr.

Dr. [redacted] was charged with professional misconduct in that he was alleged to have submitted an account for medical services rendered to a patient which services involved personal attendance upon the patient, when in fact he had not attended this patient personally at all. The evidence submitted on behalf of the College indicated that a young man had arrived at the emergency department of a hospital after a motor vehicle collision in which he had sustained minor eye injuries. The evidence of this patient and the emergency room nurse was that the condition had been described to the doctor in a telephone conversation, he had prescribed medication in response to the condition reported to him and had advised the patient to see his own family physician as soon as possible. The evidence was that the doctor had not personally attended the patient at the hospital. A bill was however sent to the patient's home with a charge for personal attendance on this patient.

The evidence for the doctor was that he had received a phone call, and being cognizant of the opinion of his peers at the patient's hometown, he had purposely attended at the hospital to satisfy himself on the patient's condition. His defence was that he was casually dressed and that his appearance and brief attendance on the patient might well have confused the patient as to whether or not a physician had

actually examined him. The Discipline Committee was unable to conclude that the facts presented in evidence were sufficient to support the charge and accordingly the charge was dismissed.

## 12. Dr. Alan Stuart Davidson

Dr. Davidson was charged with professional misconduct in that

- (a) "you released a confidential report on your patient to another person, without his consent and without being required by law to do so, all of which, having regard to all the circumstances existing herein constitutes professional misconduct as defined in Section 26(21) of Ontario Regulation 577/75 made under The Health Disciplines Act, 1974 "
- (b) "being in possession of confidential memoranda written by your patient concerning his relationship with his wife, you divulged the contents of such memoranda to the wife in the presence of the patient contrary to his objections and express instructions that you not do so, whereby you contravened the provisions of subsection 21 of Section 26 of Ontario Regulation 577/75 made under The Health Disciplines Act, 1974 "

Dr. Davidson appeared, represented by counsel and pleaded not guilty. Dr. Davidson requested a public hearing and this was granted.

Briefly, the evidence indicated that in December 1973, the couple was involved in a custody dispute concerning their 4 children. The husband, it seems, retained the services of a lawyer, who in turn sought the assistance of Dr. Davidson who presumably was to make an assessment of the husband and render a psychiatric opinion. In any event, around the month of May 1974, the couple resolved their differences and the lawyer was paid his bill by the husband which it appears included whatever bill Dr. Davidson rendered to the lawyer.

Then in September 1974 it seems both husband and wife, on their own initiative, approached Dr. Davidson for joint counselling sessions which started on September 5, 1974 and continued through to January 10, 1975. In the initial sessions it seems that Dr. Davidson made progress reports and gave a copy to both at the following session. Both the husband and Dr. Davidson stated that this manner of giving out progress reports caused some antagonism between the spouses and was accordingly stopped. The husband also stated that from time to time Dr. Davidson would extract as a topic for discussion, subject matter from memoranda that the husband had prepared in the earlier period for his lawyer who had later given copies to Dr. Davidson. The doctor however strongly denied this and stated that in fact he received only two of the four memoranda that the husband had prepared and that he (Dr. Davidson) scanned the two which he had received, thought that they were of little merit and put them in the back of his file. This part of the evidence is related only to lead up to the final joint counselling session held on January 10, 1975 in which the husband stated that Dr. Davidson again referred to the earlier memoranda, notwithstanding the clear instructions of the husband to the contrary, and since it appeared to the

husband that Dr. Davidson was not going to refrain from making references to the memoranda, he walked out of the meeting. Dr. Davidson, on the other hand, denies that this was the reason the husband walked out and Dr. Davidson's version on this area of the evidence was corroborated by that of the wife. In fact, Dr. Davidson stated that he would not agree to conduct joint counselling sessions with restrictions such as the husband says he sought to impose. In any event, Dr. Davidson prepared a Confidential Progress Report on that meeting of January 10, 1975, which Report bears the same date. This report had a note at the bottom "Copy for Court Feb. 28, 1975" and according to Dr. Davidson it was given to the wife around that date in order to assist her in Court on an assault charge that she had laid about that time against her husband, which charge was to be heard around the end of February or shortly thereafter. According to Dr. Davidson, he stated that he considered the husband to be dangerous and this report was intended to help the wife in the prosecution of the charge of assault.

The husband testified that he did not authorize Dr. Davidson to release such a report to his wife and there was no evidence presented that Dr. Davidson was required by law to release such a report, as we interpret the phrase "required by law" set out in Regulation 26(21) of The Health Disciplines Act.

It was argued that since both spouses were attending joint counselling session that the doctor was equally entitled to send a copy of his report to the husband and the wife. It appears on the evidence however that the husband did not receive a copy of this Report until some considerable time after February 28, 1975 and then only when he requested it directly of Dr. Davidson.

After hearing submissions, the Committee deliberated, found him guilty of professional misconduct and directed that he be reprimanded. Dr. Davidson has appealed this case to the Divisional Court.

## 13. Dr. [Name Redacted]

Dr. [Name Redacted] was charged with professional misconduct in that in the year 1974 he performed a bunionectomy and metatarsal osteotomy on a patient, when the said procedure was not medically necessary and in so doing he failed to maintain the standard of practice of the profession.

Dr. [Name Redacted] appeared, represented by counsel and pleaded not guilty to the charge.

On the basis of the evidence presented, the Discipline Committee was met with an application on by defence counsel to dismiss the charge on the grounds that no case had been made out against the doctor and after hearing from Dr. [Name Redacted] and his expert witness, the Committee deliberated and decided to grant defence counsel's application, and the charge was therefore dismissed.

## RESTORATION

1. Dr. Robert Louis Reid who had been found guilty of professional misconduct, and in whose case the penalty had been postponed subject to certain terms and conditions, was res-



tored to full practice privileges, having satisfied the Committee that the terms and conditions had been met

2. Dr. Engelberth Konseck was granted a full licence to practise. Dr. Konseck had been erased for cause in 1961.

3. Dr. Gary Howard Rosen, having been erased from the Register for professional misconduct in 1975 applied for and received a General Licence.

4. Dr. Ernest Ward Pedley, having been erased in 1972 for cause, and subsequently in 1973 having been placed on the Special Register subject to conditions, applied for restoration to the Register and a General Licence, and received a General Licence with no restrictions

## Report of the Medical Review Committee to the Profession, p. 15

The Medical Review Committee is pleased to have this opportunity to inform the profession of its activities since the last semi-annual meeting and to review its work over the past few years.

Since the last Report to Council, the Committee has held 8 two-day meetings and has received 59 new referrals from the General Manager of the Ontario Health Insurance Plan during that time. Of these, 57 were ordered inspected by the staff of part-time medical inspectors, now numbering almost 100. One physician was requested to provide the Committee with a written answer to the General Manager's concerns without the need for inspection following which his accounts were recommended to be paid in full, and one physician was requested to attend for an interview without prior inspection.

Forty one completed inspection reports were considered by the Committee during the period and in 27 cases, the Committee concluded that serious enough concerns were raised to warrant a request that the physician attend for an interview. In 11 cases, the Committee was satisfied that the report of the medical inspector adequately answered the concerns of the General Manager and recommended payment in full without further question. In 2 cases, payments were adjusted by the consent of the physician based on the report of the inspector and 1 case is yet to be finalized.

The Committee met for one to two hour interviews with 27 physicians. In 5 cases, the Committee was satisfied that the physicians' responses answered the concerns of the General Manager and recommended payment of the accounts in full. In 17 cases, it was concluded that charges had been submitted to the Plan which ought not to have been paid according to the O.M.A. Schedule of Fees and the Regulations and accordingly, the Committee recommended reduction of payments of these accounts to the General Manager. In 1 case, a reinspection of the doctor's practice by a multi-specialty inspection team was ordered and one review of OHIP profile data was ordered. Three cases are yet to be finalized.

The Committee has continued to find that the major cause of improper billing for physician services to OHIP is ignorance on the part of the physicians and their billing staff of the

O.M.A. Schedule and its Preamble. A typical example of such misunderstanding occurred where a physician was asked to see patients as a consultant to the dentistry department of a major hospital prior to the performance of difficult dental services within the hospital. The physician, an internist, realizing that the complete examination which he was performing could not be charged as a consultation having been referred by a dentist, charged a general assessment fee. Had he been aware of the provisions of section 29(o) of the Preamble to the Ontario Medical Association Schedule of Fees which provided that "A doctor, regardless of specialty, who is required to examine a patient in preparation for dental surgery under general anaesthesia, may charge \$12.00 (C904) when he has seen the patient in the previous twelve months for a general assessment or \$17.00 (C903) if he has not seen the patient within the previous twelve months" he would have submitted the correct fee. He was, however, unaware of the correct procedure because he had not read the Preamble to the tariff and accordingly, submitted incorrectly. His fees required adjustment by the Medical Review Committee. If every physician would only read the Preamble to the O.M.A. Schedule carefully and in detail and discuss any points which are not clearly understood with the O.M.A. secretariat, many referrals would be avoided. In addition, if all physicians would ensure themselves that every person or agency who bills on their billing cards does so in a fashion of which they would personally approve, much embarrassment and discomfort would be avoided.

A small number of referrals have, unfortunately, initiated inspections which revealed significant evidence of fraud and these investigations are now being carried forward by the Ontario Provincial Police, Anti-Rackets Branch. In addition, a number of cases have come to light in which it was necessary to inform the Registrar of conduct of the physician which was believed, ought to bring other provisions of *The Health Professions Act* into play.

Because of its concern that many doctors were becoming victims of their own ignorance of the tariff and the regulations governing billing procedures as set out in the Act, the Medical

Review Committee will continue its program of issuing Bulletins to the profession which attempt to inform the members of the regulations and laws surrounding billing practises and record keeping. In February 1976, the most comprehensive of these Bulletins to date was issued and considerable concern was expressed by some members because of the feeling that the "policies" set out were too harsh.

Considerable personal dialogue with a number of individual physicians and representatives of local medical societies and academies ensued. In the fall of this year, a meeting between the O.M.A. Executive Committee and the Medical Review Committee was held. Mutual concerns were discussed and an agreement to co-operate closely in an attempt to help physicians understand the regulations, tariff and function of peer review was reached. The O.M.A. has subsequently sent an observer, Dr. Mahon, to a number of M.R.C. meetings and has published a report setting out in detail the workings of our Committee.

In addition, the O.M.A. has agreed to help physicians whose practice patterns are referred to the M.R.C. by helping to find physician peers who would assist the referred doctor by providing counsel, opinion and moral support as may be needed. It is felt that the attendance of such peers before the M.R.C. will help the Committee to obtain a better perspective of the referred physician's practice in the context of his specialty or geographical area. It is also felt that this will alleviate the need felt by some doctors to engage solicitors, who, while having the best of intentions, are not able to be of much assistance in discussing questions of medical necessity and professional standards of practise.

The Committee expresses its thanks to the O.M.A. Executive Committee for its gracious and timely assistance in these matters.

The Medical Review Committee has had occasion in the last few months to review at some length the extent and character of its efforts since the inception of the Committee. This was done by a formal review mechanism to assess effectiveness and to assist in directing priorities and future directions. It is felt that the information which has been derived from this review will be enlightening to members of the profession at large and particularly, when read in conjunction with the material to be published in the Ontario Medical Review will give College members a much clearer perspective on the activities of the Committee.

In reviewing the following charts, members should be aware that the figures relate to fiscal years running from April 1st to March 31st respectively and that footnotes must be read carefully in order to correctly interpret the charted figures.

The charts show that since 1971-1972, the Committee has considered 532 matters all referred directly by the General Manager of OHIP save those referred under Q.S.P.F. which were generated to the Committee according to a formula.

A perusal of the activities during the years reviewed will show that initially, only small numbers of practitioners were referred, almost all with only one concern expressed and that a great deal of time was spent considering a small number of matters.

In ensuing years in the early stage of the Committee's development, the majority of referrals involved possible misrepresentation of claims and a review of a significant number of physicians on the basis that they had very high incomes. Review of the latter category was extremely unsophisticated and unproductive in nature and was soon discontinued. Review of the former yielded substantial numbers of problems requiring police or other investigative activities. In some cases, extremely large amounts of money were involved. In 1973, the Medical Review Committee and Medical Branch moved to a slightly more sophisticated method of referral based upon ratio of general assessments to minor assessments in family practice. This was more productive and many physicians were found not to be keeping adequate records of general assessments and monies had to be recovered. Much more important, recent inspections have indicated that the profession as a whole has, possibly because of this activity, become aware of the necessity of keeping adequate records in the case of such assessments and the standard of practise in the province has significantly improved with respect to this service.

Through 1974 and into 1975, the Quality Service Payment Formula described in the various Bulletins distributed at that time which was a formula developed between the Medical Review Committee and peer groups in each specialty to identify those practices where volume of practice raised questions as to the quality of service was in place and while effective for purposes consistent with its design, it proved to be from the point of view of monitoring consultants, an unsophisticated device which fell into disuse in early 1975.

Subsequently, new profile analysis, detailed claims analysis, Fee Schedule Code utilization profile and patient claims history have been used together as a monitoring system and this rather more sophisticated method of analysis has reduced the number of marginally founded referrals to the Medical Review Committee and improved the efficiency of professional peer review substantially.

Very rough figures indicating in general proportions the number of physicians by specialty reviewed during the existence of the Committee are indicated in the following chart. These figures are estimates based on periodic sampling and are useful to get an idea of relative proportions of Reviews by Specialty.

|   |    |
|---|----|
| General Practice  | 55 |
| General Surgery   | 50 |
| Internal Medicine   | 45 |
| Obstetrics & Gynaecology                                  | 55 |
| Paediatrics   | 30 |
| Orthopaedic Surgery                                       | 45 |
| Otolaryngology  | 45 |
| Urology   | 15 |
| Ophthalmology   | 55 |
| Dermatology   | 15 |
| Neurosurgery  | 05 |
| Plastic Surgery   | 02 |
| Diagnostic Radiology                                      | 20 |
| Anaesthesia   | 10 |
| Neurology   | 05 |
| Psychiatry  | 05 |
| Thoracic Surgery  | 03 |
| Physical Medicine & Rehabilitation                        | 01 |
| Therapeutic Radiology                                     | 00 |
| Physicians Operating Laboratories & Diagnostic Facilities | 50 |

As always, the workload of the Committee and the technology and manpower needs which accompany it increase steadily. The Committee, in addition to service data microfiche, is now equipped with registration data microfiche on a district and province basis. This allows for more rapid interpretation of service data in the investigation phase by providing the investigative staff of the Committee with a ready means to identify practice association, hospital affiliations, clinic billings and multiple physician billings and so eliminate these from the stream of investigation at an early stage. It is also of considerable value to the registration department of the College in locating current addresses for physicians in the case of returned correspondence regarding licensure. The Committee will shortly acquire patient history microfiche which will involve a bimonthly update of all services rendered to all patients by all physicians and practitioners in the province to allow rapid interpretation of referrals and inquiries re professional services billed through OHIP.

Several new computer programs are in the developmental stage and in cooperation with OHIP's Professional Services Monitoring Branch and Ministry of Health Systems staff, the Medical Review Committee continues to labour at improving our quality of care monitoring process which is now counted among the most advanced in the world.

Physicians are now able to obtain their new profile analyses on a yearly basis from the Ministry of Health at cost as has been the case with monthly service distributions. It is felt that this

development will be very helpful both in allowing physicians to better manage their practices and also, in revealing to them the nature of their practices in comparison with those of their peers both in terms of their own services and services which they generate. In addition, the new year has seen the introduction of the new Ontario Diagnostic Coding System for ambulatory care which, combining the best features of the International Classification of Diseases and subclassifications designed specifically for ambulatory care, will allow a better understanding of the distribution of disease processes and the patterns of health care delivery distributed throughout the province geographically. It is hoped and expected that this additional information, which will be voluntarily provided by the profession in the best interest of their patients, will allow for a more reasoned and equitable distribution of needed health care services based on demonstrated patient need in a time of fiscal constraint. Profiles may be developed utilizing diagnostic data provided by the physician which will show, for example on a regional basis, the incidence of, as an example respiratory disease in a particular area, is considerably in excess of the provincial norm. This may well identify the need for respiratory diagnostic and therapeutic equipment and personnel associated with the local health care facilities which would otherwise go unrecognized or unfilled. It is hoped, with the co-operation of the profession, that such information will allow an improved standard of health care delivery and monitoring of the effectiveness of the health care system.



INTERIM REPORT, February, 1978, OF THE COLLEGE OF PHYSICIANS AND  
SURGEONS OF ONTARIO. (Excerpts)

*The College of Physicians  
and Surgeons of Ontario*

# REGISTRATION STATISTICS

at December 31, 1977

## NUMBER OF MEMBERS ON THE GENERAL REGISTER

|                        |        |
|------------------------|--------|
| December 31, 1971..... | 12,558 |
| December 31, 1972..... | 13,340 |
| December 31, 1973..... | 13,932 |
| December 31, 1974..... | 14,472 |
| December 31, 1975..... | 14,951 |
| December 31, 1976..... | 15,461 |
| December 31, 1977..... | 15,961 |

## NEW REGISTRATION BY COUNTRY OF GRADUATION

|                   | 1976 | 1977 |
|-------------------|------|------|
| Other Countries:— |      |      |
| Argentina         | 1    | 1    |
| Australia         | 7    | 10   |
| Brazil            | 1    | 1    |
| Bulgaria          | 1    | 1    |
| Burma             | 1    | 1    |
| Ceylon            | 2    | 2    |
| China             | 1    | 1    |
| Czechoslovakia    | 9    | 5    |
| Denmark           | 1    | 1    |
| East Africa       | 1    | 1    |
| Egypt             | 6    | 11   |
| France            | 2    | 1    |
| Germany           | 1    | 3    |
| Greece            | 3    | 2    |
| Hong Kong         | 2    | 2    |
| Hungary           | 9    | 6    |
| India             | 2    | 4    |
| Indonesia         | 32   | 23   |
| Iran              | 1    | 1    |
| Italy             | 1    | 1    |
| Kenya             | 1    | 1    |
| Malaysia          | 1    | 1    |
| Mexico            | 4    | 2    |
| Netherlands       | 1    | 1    |
| New Zealand       | 6    | 2    |
| Nigeria           | 1    | 2    |
| Pakistan          | 7    | 4    |
| Peru              | 1    | 1    |
| Philippines       | 3    | 5    |
| Poland            | 5    | 4    |
| Portugal          | 2    | 1    |
| Romania           | 2    | 7    |
| Russia            | 1    | 1    |
| Singapore         | 1    | 1    |
| South Africa      | 18   | 14   |
| Spain             | 3    | 1    |
| Switzerland       | 1    | 2    |
| Taiwan            | 6    | 6    |
| Turkey            | 2    | 1    |
| Uganda            | 8    | 4    |
| Ukraine           | 1    | 1    |
| United Kingdom    | 126  | 117  |
| United States     | 25   | 12   |
| Venezuela         | 1    | 1    |
| Vietnam           | 1    | 2    |
| West Indies       | 4    | 9    |
| Yugoslavia        | 8    | 1    |
| Sub total         | 321  | 272  |
| Canada —          |      |      |
| Alberta           | 438  | 405  |
| Other Provinces   | 114  | 167  |
| Sub total         | 552  | 572  |
| TOTAL             | 873  | 844  |

Table I

# REGISTRATION IN ONTARIO 1971-1977

| Year       | Graduates from Canadian Universities | Graduates from U.K., Australia, N.Z., S.A. | Graduates from Universities in U.S.A. | Graduates from Other Universities | Total |
|------------|--------------------------------------|--|---------------------------------------|-----------------------------------|-------|
| 1971 ..... | 500                                  | 203  | 20                                    | 229                               | 952   |
| 1972 ..... | 523                                  | 227  | 20                                    | 254                               | 1024  |
| 1973 ..... | 529                                  | 177  | 22                                    | 167                               | 895   |
| 1974 ..... | 513                                  | 192  | 15                                    | 154                               | 874   |
| 1975 ..... | 513                                  | 193  | 14                                    | 116                               | 836   |
| 1976 ..... | 552                                  | 157  | 25                                    | 139                               | 873   |
| 1977 ..... | 572                                  | 143  | 12                                    | 117                               | 844   |

## REGISTRATIONS BY SOURCE OF MEDICAL EDUCATION

Table II

| Year       | Ontario |       | Other Provinces |       | U.K. and Ireland |       | Aust., N.Z., S.A. and U.S.A. |       | Other Countries |       | Total |
|------------|---------|-------|-----------------|-------|------------------|-------|------------------------------|-------|-----------------|-------|-------|
|            | G.P.    | Spec. | G.P.            | Spec. | G.P.             | Spec. | G.P.                         | Spec. | G.P.            | Spec. |       |
| 1971 ..... | 332     | 10    | 136             | 22    | 161              | 16    | 45                           | 1     | 172             | 57    | 952   |
| 1972 ..... | 349     | 10    | 143             | 21    | 174              | 27    | 40                           | 6     | 166             | 88    | 1024  |
| 1973 ..... | 385     | 17    | 111             | 16    | 129              | 20    | 43                           | 7     | 121             | 46    | 895   |
| 1974 ..... | 393     | 3     | 96              | 15    | 151              | 12    | 41                           | 1     | 130             | 24    | 874   |
| 1975 ..... | 378     | 10    | 112             | 13    | 164              | 10    | 32                           | 1     | 91              | 25    | 836   |
| 1976 ..... | 432     | 6     | 106             | 8     | 117              | 9     | 50                           | 6     | 109             | 30    | 873   |
| 1977 ..... | 386     | 19    | 130             | 37    | 88               | 29    | 28                           | 10    | 73              | 44    | 844   |

Table III

## ERASURES

| Year       | DEATH |       | RETIREMENT |    |                |    | FOR DUES |       | FOR CAUSE |       | Total |
|------------|-------|-------|------------|----|----------------|----|----------|-------|-----------|-------|-------|
|            | G.P.  | Spec. | In Ontario |    | Out of Ontario |    | G.P.     | Spec. | G.P.      | Spec. |       |
| 1971 ..... | 48    | 30    | 24         | 13 | 73             | 44 | 46       | 22    | 1         | 0     | 301   |
| 1972 ..... | 49    | 39    | 31         | 10 | 94             | 54 | 20       | 6     | 3         | 3     | 312   |
| 1973 ..... | 59    | 55    | 45         | 15 | 77             | 80 | 24       | 10    | 1         | 2     | 368   |
| 1974 ..... | 39    | 38    | 37         | 20 | 141            | 78 | 35       | 21    | 0         | 1     | 410   |
| 1975 ..... | 53    | 42    | 41         | 19 | 122            | 79 | 43       | 12    | 2         | 2     | 415   |
| 1976 ..... | 64    | 44    | 49         | 23 | 111            | 74 | 42       | 27    | 2         | 0     | 436   |
| 1977 ..... | 60    | 40    | 72         | 30 | 87             | 68 | 36       | 10    | 2         | 0     | 405   |

Table IV

## GAIN OR LOSS

| Year       | New Registrations | Re Registrations | Erasures | Net gain (loss) |
|------------|-------------------|------------------|----------|-----------------|
| 1971 ..... | 952               | 79               | 301      | 730             |
| 1972 ..... | 1024              | 70               | 312      | 782             |
| 1973 ..... | 895               | 65               | 368      | 592             |
| 1974 ..... | 874               | 76               | 410      | 540             |
| 1975 ..... | 836               | 58               | 415      | 479             |
| 1976 ..... | 873               | 73               | 436      | 510             |
| 1977 ..... | 844               | 61               | 405      | 500             |

Table V

## REGISTRATIONS ON THE SPECIAL REGISTER

| Year                | Classification   |                        |                            |                           |                     | Total |
|---------------------|------------------|------------------------|----------------------------|---------------------------|---------------------|-------|
|                     | Academic Licence | Public Service Licence | Un-der served Area Licence | Hospital Practice Licence | Specialised Licence |       |
| 1977 to now         |                  |                        |                            |                           |                     |       |
| Registrations ..... | 11               | 8                      | 6                          | 11                        | 0                   | 36    |
| Renewals .....      | 141              | 143                    | 36                         | 48                        | 55                  | 423   |
| TOTAL .....         | 152              | 151                    | 42                         | 59                        | 55                  | 459   |

## Report of the Complaints Committee, p. 5

In a ten-month period, from January 1, 1977 to October 31, 1977, there has been a slight decrease in the number of complaints received at the College compared to the same period in 1976. There has, however, been an increase in the number of cases considered by the Complaints Committee.

Certain complaints are being received so frequently that they have become a cause for concern. These have been grouped under the appropriate subsection of Ontario Regulation 577/75 of the Health Disciplines Act, 1974.

### **Section 26(8):** *"charging a fee that is excessive in relation to the services performed"*

Complaints related to alleged breaches of this subsection are frequently concerned with fees charged by physicians for medico-legal reports and reports to insurance companies. In the 1977 Schedule of Fees of the Ontario Medical Association, fees for all reports, with the sole exception of a certificate of mental illness, are listed as I.C. (Independent Consideration). It is therefore at the discretion of the individual physician to arrive at what he considers to be a fair fee for performing this particular service, taking into consideration the time and effort expended in preparing the required report. It should be pointed out that not infrequently the account for this service is passed directly to the patient, who may be in no position (in cases involving claims for damages for personal injuries) to pay the account until civil litigation has been completed which may take several years.

It is the usual practice of the College, in such cases, to refer the complainant to the Mediation Committee of the Ontario Medical Association where the appropriateness of the doctor's fee can be adjudicated by his peers.

### **Section 26(21):** *"giving information concerning a patient's condition or any professional services performed for a patient to any person other than the patient without the consent of the patient unless required to do so by law"*

During the past year the College has investigated several cases in which it has been alleged that this regulation has been breached, one of which was referred to the Discipline Committee. However, many of these complaints, dismissed by the Complaints Committee, have been referred to the Health Disciplines Board. Initially the Board considered that this regulation should be interpreted literally, and in fact, this opinion was supported by the Board's legal counsel who attended several reviews when these cases were discussed. However, in recent cases the Board has agreed that in certain instances, a strict interpretation of this subsection would be inappropriate as it would prevent a physician from fulfilling an overriding responsibility; such as communicating with a patient's family, or providing necessary information for the welfare of children — and indeed of adults —

where the patient has expressed the intention of inflicting bodily harm.

The College's interpretation of the intent of this subsection may be found elsewhere in this report.

### **Section 26(26):** *"failing to provide within a reasonable time and without cause any report or certificate requested by a patient or his authorized agent in respect of an examination or treatment performed by the member"*

The College has received a large number of complaints alleging a violation of this subsection. These relate to the failure of physicians to provide necessary medical information to another physician at the request of a patient; failure to respond to a request for a medico-legal report; and the failure to provide the Workmen's Compensation Board with a report.

The alleged failure of communication on the part of physicians continues to be the basic reason for many complaints. This issue is frequently a cause of concern at Health Disciplines Board's reviews with special reference to the alleged failure of physicians to explain adequately alternate methods of treatment; the results to be anticipated; the expected period of disability; and the alleged failure of physicians to communicate with patients and/or the family during treatment especially in cases not progressing favorably.

Doctor's records, both in his office and in the hospital, are frequently his sole means of establishing the fact that proper medical care was rendered. When such records are deficient, it may be very difficult for a doctor to recall exactly what transpired during the course of his attendance on a patient at a later date. It should also be pointed out that there is a description in the regulations of the Health Disciplines Act detailing exactly the information that must be provided in a patient's medical record. This includes the name and address of the patient; each date that the member sees the patient; a history of the patient; particulars of each physical examination of the patient by the member; investigations ordered by the member and the results of the investigations; each diagnosis made by the member respecting the patient; and each treatment prescribed by the member for the patient. Such records are required to be retained by the member for a period of six years after the date of the last entry in the record or until the member ceases to engage in the practice of medicine, whichever first occurs.

### *Activities of the Complaints Department*

For the period January 1, 1975 to October 31, 1976, the Complaints Department received 524 new pieces of correspondence; 219 items (42%) were processed as inquiries while 305 items (58%) were handled as complaints. For the



same period in 1977, the Department received 498 new pieces of correspondence with 250 items (50%) being processed as inquiries and 248 items (50%) being handled as complaints.

A comparison of these figures indicates that while the total of new mail is down by 26 items (5%) in 1977, the Department is processing more (8%) of it as inquiries.

The comparison of the departmental and Committee resolutions of the total amount of new mail (inquiries and complaints) for 1976 and 1977 remains about the same. The Department resolved 64% and the Committee 36% in 1976, while in 1977 the Department resolved 63% and the Committee resolved 37%.

It is of interest to note that in 1976, 63% of the new mail was written by the patient while in 37% it was originated by a third party. In 1977, 53% of the new mail was written by the patient and 47% was written by someone acting on behalf of the patient.

#### *Activities of the Complaints Committee*

In the first ten months of 1977, the Committee met on nine occasions and reviewed 168 cases. Of these, five cases (3%) were referred to Discipline, 117 cases (70%) were dismissed, while 42 cases (24%) were dismissed with an admonishment, caution, warning or suggestion. One case (1%) was referred to another committee of the College, and in three cases (2%) the decision was deferred pending receipt of additional information. It is interesting to note that in 1976, 20 cases (9%) of the 226 cases considered by the Complaints Committee were referred to Discipline, while in

1977 only five cases (3%) were so referred.

In 1976, 76 cases (38%) dismissed by the Complaints Committee were referred to the Health Discipline Board, while in 1977, 57 cases (36%) that had been dismissed by the Complaints Committee were referred to this Board.

#### *Activities of the Health Disciplines Board*

In 1976, of the 76 cases considered by the Health Disciplines Board, the decision of the Complaints Committee was confirmed in 61 cases (80%), 12 cases (16%) were referred back to the Complaints Committee for reconsideration, and at year end in three cases (4%) a decision had not been received by the College.

In the first ten months of 1977, of the 57 cases reviewed by the Health Disciplines Board, in 26 cases (46%) the decision of the Complaints Committee was confirmed, in two cases (3%) the case was referred back to the Complaints Committee, and in 29 cases (51%) the Board's decision had not been received at the College.

The foregoing statistics indicate that while the number of complaints and inquiries directed to the College has not altered appreciably in the past year, the number of cases referred to Discipline by the Complaints Committee and the number of cases referred back to the College by the Health Disciplines Board have both decreased significantly. This may be attributed to the more thorough investigation being carried out by the College in dealing with complaints and inquiries, together with more detailed reasons being written by members of the Complaints Committee to substantiate their decision.

### Report of the Discipline Committee, p. 7

1. Dr. .... was charged with professional misconduct in that it was alleged he had carried on an improper association and engaged in sexual intercourse with a patient, improperly prescribed various drugs for her and failed to assure that she sought and received competent psychiatric assistance.

Dr. .... attended the Discipline Committee hearing with his Counsel.

After evidence and argument the Discipline Committee found that Dr. .... had developed a social relationship with a Mrs. .... and had hired her as an employee at his clinic. Their relationship eventually led to an affair, and sexual intercourse occurred. Thereafter, Dr. .... arranged for some pregnancy tests to be done for Mrs. .... and prescribed certain drugs for her.

The Discipline Committee found that Dr. .... was not guilty of professional misconduct. It was the opinion of the majority of the Committee that the phrase "sexual impropriety with a patient" found in Section 26(28) of Regulation 577 was intended to prevent medical doctors from using their privileged position to take sexual advantage

of their patients. This section was not designed primarily to prevent a medical doctor from treating a person with whom he has an existing sexual relationship. In this case it was clear that the sexual relationship was initiated as a result of an employment and social relationship and not as a result of any doctor/patient relationship which, at the initial stage, did not exist.

The charge of professional misconduct against Dr. .... was therefore dismissed.

2. Dr. .... was charged with eight counts of professional misconduct, seven of which involved a dilation and evacuation procedure on a single patient, and the eighth charge concerned inadequate surgical assistance in the performance of a mastectomy.

After evidence and argument the Discipline Committee found that the facts with respect to six of the eight charges against Dr. .... had been made out. The Committee went on to find that only two of the charges made out constituted professional misconduct. Therefore, Dr. .... was convicted of professional misconduct in failing to maintain the standard of practice of the profession

by failing to immediately seek consultation when it appeared that his attempt to perform a dilation and evacuation procedure was not progressing as planned. In addition, the Committee found that, by failing to remain with the patient in the operating room when it became apparent that the initial attempts at suction were futile, Dr. .... conducted himself in a manner that would reasonably be regarded by members of the Profession as disgraceful and unprofessional. The other charges against Dr. .... were dismissed.

This matter came on for hearing and decision with respect to a penalty on August 9, 1977 at which time the Committee, after deliberation, assessed the following penalty:

- (1) Dr. .... be reprimanded and the reprimand be recorded on the Register;
- (2) the name of Dr. .... not be published;
- (3) Dr. .... 's surgical privileges in the operating room will be withdrawn and a condition attached to his licence to that effect. He will be entitled to re-apply in two years if there is ample evidence to satisfy the College that he has had sufficient retraining in surgery.

3. Dr. Omelian Boris Yarey was charged with professional misconduct arising out of the use of and the reliance placed upon x-ray films that were of little or no value for diagnostic purposes, making interpretations of x-ray films that could not properly be supported by the films, failing to properly examine or treat five patients, and improper use of two separate drugs.

The Discipline Committee found that the charge of relying on x-ray films of little or no value for diagnostic purposes was made out, as were the charges of failing to properly examine or treat four of the five patients. The charge with respect to the fifth patient was withdrawn, and the Committee concluded that the facts in support of the other charges were not established.

After careful consideration the Discipline Committee concluded that Dr. Yarey failed to maintain the standard of practice of the Profession and in addition exhibited conduct that, having regard to all the circumstances, would reasonably be regarded by members of the Profession as unprofessional. It follows that Dr. O. B. Yarey was found guilty of professional misconduct as alleged in the five charges brought against him.

After careful consideration the Discipline Committee imposed the following penalty:

The decision as to penalty will be postponed for a period of six months, or for such further period as the Committee may deem fit, under the following conditions:

- (1) Dr. Yarey is prohibited from treating patients with diapulse, ultra violet light, and from the taking or interpreting of x-rays, but shall refer patients requiring such measures to an approved facility;
- (2) Dr. Yarey shows satisfactory proof that he has upgraded his skills and knowledge as a family practitioner;

(3) that Dr. Yarey report in writing to the Registrar those steps he is taking to carry out the above measures within six months.

4. Dr. .... was initially charged with twenty counts of professional misconduct. Counsel for the College formally withdrew four of the counts during the course of four days of hearings, and in argument Counsel for the College conceded that the facts were not made out to support two other counts.

Of the fourteen remaining counts one dealt with the legibility of patients' charts and the remaining thirteen dealt with the kind of treatment or drugs prescribed or administered to various patients, or the lack of treatment rendered to various patients.

The Discipline Committee determined that the facts set out in eight of these counts were proved. The Committee took the view that, although there was little doubt that Dr. .... 's practice exhibited certain deficiencies in therapeutics and that he had been guilty of errors in judgment, his level of practice was not below the standard of medicine practised in Ontario. The Committee concluded that, although certain areas of Dr. .... 's practice were less than ideal, there was a real risk, in cases of this type, in viewing the matter entirely or even primarily from the vantage point of hindsight.

The Discipline Committee therefore found that Dr. .... was not guilty of professional misconduct and dismissed the charges against him.

5. Dr. .... was charged with professional misconduct in that in the years 1974 and 1975 he referred a number of patients to S. & M. Laboratories Limited in return for which he accepted the benefit of a leased automobile paid for by S. & M. Laboratories Limited.

After evidence and argument the Discipline Committee found that the case against Dr. .... had not been made out and the charge against him was dismissed.

6. Dr. Daniel Wong was charged with professional misconduct in that he was convicted of unlawfully trafficking in a narcotic, to wit, Pethidine (ethyl 1-Methyl-4-phenylpiperidine-4-carboxylate) contrary to Section 4(1) of the Narcotic Control Act.

At the commencement of the hearing Dr. Wong pleaded guilty to the charge, and after hearing evidence and submissions with respect to penalty, the Discipline Committee found Dr. Wong guilty of professional misconduct and revoked his licence to practise medicine in Ontario.

7. Dr. .... was charged with professional misconduct in that, without the consent of his patient, he wrote a letter to the solicitor of his patient's former husband, which letter contained information about the condition of his patient and professional services rendered to her.

Dr. .... attended the Discipline Committee hearing with Counsel and pleaded not guilty, although he admitted writing the letter, that the letter contained certain



information with respect to his patient's condition, that he did not have his patient's permission to disclose this information, and that the information came to him as a result of his professional relationship with his patient.

After careful consideration the Discipline Committee found Dr. .... guilty of professional misconduct as charged pursuant to Section 26(21) of the Regulations passed under The Health Disciplines Act.

In light of all the circumstances including the general nature of the information disclosed and the facts that all this information was already known to the previous husband of the patient and considering Dr. ....'s concern for the welfare of a young child, the Discipline Committee suspended the imposition of a penalty for a period of six months, no other terms being imposed. The Committee also directed that Dr. ....'s name not appear in the published report of the College.

8. Dr. .... was charged with two charges of professional misconduct in that, between 1973 and 1975, while engaged as Chief Pathologist at ..... General Hospital, Toronto, he continued to use laboratory facilities, staff and materials at the hospital to process his own private cytology after his right to do so had been terminated by the hospital and that he attempted to mislead the hospital into believing that he had stopped doing and had not done such work in the hospital, all of which was alleged to be misconduct in a professional respect.

At the hearing Dr. .... appearing with Counsel, pleaded guilty to the charges and was reprimanded by the Discipline Committee. In addition, the Committee ordered that Dr. ....'s name not be published in the report of the College.

### Report of the Long Term Planning Committee, p. 9

The responsibility and activity of the College of Physicians and Surgeons is defined under the terms of The Health Disciplines Act and its Regulations. It might seem premature to be undertaking further planning subsequent to an Act so recently proclaimed. However, recent experience must tell us that our profession now so intimately associated with social legislation in health matters is in the midst of a scene which is subject to rapid change. Such changes involve not only those which are taking place in clinical medicine but those taking place in the organization and provision of health services and in the expectations of the public in the provision of those services.

The Health Disciplines Act states clearly the objects of the College of Physicians and Surgeons in Section 46(2) as being:

- 1) to regulate the practice of medicine and govern its members;
- 2) to establish, maintain and develop standards of knowledge and skill;
- 3) to establish, maintain and develop standards of qualifications and practice;
- 4) to establish, maintain and develop standards of professional ethics;
- 5) to administer Part III of the Act relative to the Practice of Medicine;
- 6) to consider other objects relating to human health care as the Council of the College of Physicians and Surgeons considers desirable.

However, Subsection (2) of Section 46 clearly enunciates that these objects are established "in order that the public interest may be served and protected".

A. A. Klass in 1965 discussed a clear distinction in professional organizations between what he termed "Associations" and "Societies". The Association was a professional organization of a benevolent type made up of professionals with a common and mutually beneficial purpose

which worked primarily for the benefit of its members. The Ontario Medical Association is an example of such an organization which plays an important and vital role for the profession when public policy is being determined. Since pragmatically such policies are a product of many inputs from what might be termed self-interest groups.

The "Society" on the other hand was a professional organization in the profession whose primary function was not the protection of its members, but the maintenance of a code of standards for the protection of the citizens of the state. The College of Physicians and Surgeons fits such a role and it is defined under the Provincial Statute. The Statute goes further in that it defines a mechanism of accountability required of such a professional organization. Such a safeguard was influenced by the McRuer Report and led to the appointment of lay individuals to the Council as well as an establishment of an appeal or review mechanism for some of the actions of the College by means of the Health Disciplines Board.

The distinction between these two concepts of professional groups is simply not understood by the majority of the public and unfortunately little more appreciated by our own members. The clear demonstration that this College serves the public interest is essential if we are to remain credible in the eyes of the public. Without adequate communication, the public interest although being well served may not have the appearance of being well served. It is important that this appearance be made and to do so will require openness in our dealings and free communication with both the public and the profession. Our relationships with the profession are also in need of improvement. We must make sure that the profession really understands, appreciates and supports our role which is one of internal government and self-regulation. We must be positive in communicating our position in all matters. We must be just as visible and just as strong in defending good practice as we are in condemning

poor practice. In short, with both the public and the profession, we must have a persistently and consistently higher profile.

Dr. Bette Stephenson discussed the Self-Governing Professions in an address to the Ontario Association of Architects in February of this year. She was emphasizing the need of the profession to become more communicative when she said "The profession like any institution can drift away from those it is designed to serve into isolation. When that happens, the public sees the professional not as an ally but as an adversary."

"Speak out. To the public you say everything when you say nothing. There is eloquence in your silence."

The standards of our profession are not static, they must change not only as clinical medicine changes but also as the public we serve comes to sense or expect the need for such change. Our basic responsibility is the protection of the public interest with respect to the practice of medicine. Our mechanism in providing such protection is the setting of and maintaining standards for the practice of the profession. Despite the wide ranging discussions of our Committee, we found ourselves returning to this basic function as the core of our self-governing role. It is the heart of our professionalism.

The security of the College as a repository and guardian of professional standards depends on the confidence of both the public and the profession. This role will pass from us if we lose our credibility with the public or if the profession simply doesn't care. It is clear to the Committee that our College must be more positive in its role and more visible to both the public and the profession. This important stance is common to many of the specific recommendations contained in this Report.

## A. COMMUNICATION

*Recommendation 1: That the College develop a communication system with the aim of providing a monthly release outlining the activities and policies of the College.*

The principal method of communication with the profession is our Annual and Interim Reports. This, in practical terms, is also a prime method of public communication. Such reports are not confidential documents nor is it appropriate that they should be. By virtue of long intervals between such reports, matters of complaints and discipline assume a major component of the report, and issues on occasion have lost their timeliness. It was the feeling of the Committee that frequent, short, regular reports of College activity are required which will allow timely release of information, reflect the openness of our dealings to the profession and the public, and fulfill an educational function to both by regular exposure of our activities. The Committee is not recommending discontinuance of the current publications but feels that under such a system, the major publication could contain a fuller discussion of the substantive issues which we deal with. In making this recommendation, the Committee is aware that substantial resources will be required and that a significant and identifiable portion of the College budget will have to be designated. However, it is our

opinion that the College cannot maintain a low profile and at the same time expect to be seen to be protecting the public interest. Full and open disclosure of the workings of the College in a positive manner will be necessary, and good communication is required to improve the appreciation of our role by both the public and the profession.

*Recommendation 2: That the College adopt as a matter of policy the requirement that the affairs and functions of the College be conducted with complete openness to the end that the public interest appears to be served as well as actually being served, and that without limiting the generality of the foregoing, the College adopt the policy of publishing all the names of practitioners found guilty of professional misconduct.*

A recent decision of a discipline panel not to publish the name of a member found guilty of professional misconduct attracted considerable public interest and the College was placed in a very unfavourable light by the press and other interested parties by its refusal to give out this information. Such a stance cannot be seen to be in the public interest, and threatens to discredit the purpose and therefore the existence of a self-governing body. Secretiveness and lack of candor in a body set up to protect the public interest is simply not a tenable policy in today's society. At the same time, confidentiality as contemplated in Section 65 should and can be maintained.

*Recommendation 3: That the functions of the College be brought to the attention of all members of the profession in a positive manner by means of College publications, and that a method of positive description of College functions to all medical students during their undergraduate studies be determined.*

The College of Physicians and Surgeons no longer controls curricula in medical schools. Although each school has a component of instruction in this area, it is felt to be variable in time and content. We do, however, have strong ties by means of our university representatives and there is a mechanism whereby the College can have an educational input to the senior students.

College publications should demonstrate the initiatives of the College and members of the profession in serving the public interest. Credits should be given and taken where due.

Recommendation 4 was reproduced above at p. 417.

## B. MANPOWER STUDIES

*Recommendation 5: That the College collect manpower data of the type presently being collected, that this data be stored within the College, that access be at the discretion of the Council of the College, and that individual confidentiality be maintained.*

The Committee's discussion of this issue was undertaken with the knowledge that Council has already had considerable debate on this issue. It is our feeling that such data



collected and available to the College may be very important in "the protection of the public interest", and that a clear statement of policy with regard to our role in medical manpower was needed. There was agreement that the College had a responsibility to collect information considered essential to determine the current and future levels and deployment of medical manpower in Ontario.

The government can gather information from other sources, but it is generally conceded that this would be less reliable, and less current than the method proposed by the College.

It is not inconceivable that proposals for the delivery of service and the deployment of physicians will be forthcoming. This College should be in a position to make a judgment about such proposals. Furthermore, this College may be required to speak out on such proposals if they contravene the public interest in the provision of professional medical services. If the College should have to take such a position in the future, their position would be a strong one only if their data base was accurate, and only if our position could clearly be defined in the interest of the public and not the profession. To return to our original theme, of paramount importance is our credibility and public confidence.

### C. NEW PROCEDURES OR THERAPIES

*Recommendation 6: That a small three member committee be established to consider problems raised relative to new modalities of practice and new therapeutic agents. This committee would be free to enlist the expertise of authorities in the field and using this information advise the Executive Committee as to the position the College should take.*

The Committee felt strongly that the College should identify its position with regard to new modalities of treatment and therapeutic agents. As an example, as the body vested to preserve the public interest in medical practice, we have not taken a position on the use of Laetrile. It is recognized in some instances that the timeliness of such statements would be of particular importance and it would be important for the College to respond quickly and authoritatively to situations as they arise.

On the other hand, there is no reason that such statements could not be anticipatory in nature. They would be directed to the profession as a regular educational release via a monthly College publication. They would also be useful to the public as constituting a statement from the body responsible for their protection.

At the present time, this is done on an ad hoc basis by College officers having obtained appropriate advice, and also by the Medical Review Committee in making judgments on the medical necessity of services when a case has been presented to them by OHIP (e.g. HCG). It has also occurred in a more organized fashion by the Executive and Council (Acupuncture). It was our feeling that an on-going review, with wide circulation of individual items would be helpful to the profession and would produce a broader "College

opinion" than through the Medical Review Committee or ad hoc mechanism, and also we feel demonstrate to the public that we do act in a positive fashion to their safeguard and benefit.

This position should not be construed as preventing practitioners from applying new modalities of therapy as long as they pose no significant hazard to an informed patient. Nevertheless, surely the College should not shrink from making a judgment pro or con about the efficacy of such therapy based on the opinion of experts.

The make-up of the committee should be chosen to bring real expertise to bear. We would suggest one member should be a clinical pharmacologist.

### D. LICENSURE

*Recommendation 7: That the Education Committee carefully examine the following.*

1. A straight internship is insufficient training for a General licence.
2. Licence be granted to physicians taking straight internships, but only after certification by the Royal College of Physicians and Surgeons of Canada.
3. The Education Committee carry out studies to determine competence for a General licence after one or two years of training.

The Committee were made aware of the current activities of the Education Committee, but were not prepared to take a firm position on the preregistration training period. However, they feel certain issues required clarification. This recommendation is supportive of the Education Committee plans for studying a variety of pre-registration routes.

They did feel, however, that the expectations of the experience gained in clinical clerkships which were held at the time of institution of that program had not been met. Consequently, this recommendation is designed to urge the Education Committee to address themselves to this issue.

### E. PEER REVIEW

*Recommendation 8: That a proposal for a pilot study of peer review programs be taken by the College to the districts for discussion. The initial methodology and ground rules for peer review should be outlined and the non-punitive educational nature of the outcome be guaranteed.*

Knowing that peer review will be the subject of a report by a separate committee, this topic was not discussed in depth. The proposal placed before Council in April of 1977 was supported in principle and the discussion focused on ways and means of introducing such a program.

In the present climate, any activities which could be interpreted as additional controls would likely engender resentment. It would therefore be necessary to present a proposal for peer review in a positive manner with emphasis on the educational purpose and the benefits to be gained by the profession. It was felt that a pilot study would be required to obtain evidence to support a peer review program and it

that persons taking part in such a study should be protected from punitive measures. The possibility of working with the Ontario Council of Continuing Education for developing the educational components of the program should be explored.

It will be the responsibility of the College to gain the acceptance and support of the profession for such a program. To this end, the Committee feels that any such proposal should be discussed widely among members to allow their input. A mechanism for a district-by-district discussion should be arranged.

#### F. DELEGATION OF MEDICAL ACTS

*Recommendation 9: An act declared by the College to be a medical act can be done by a non-medical person when the College has approved the training and the assessment of the proficiency of these persons to perform the act.*

The Committee reviewed current mechanisms and current problems in delegating medical acts. Historically, the growth of paramedical individuals has been rapid and necessary. It is a situation which is far from static as the technology of medicine advances, and as other professions develop and change or seek to change their role.

It is our view that the College should not be seen to be defensive in the use of this mechanism, since modern practice already has fostered such developments. The recommendation is designed to enunciate a policy whereby our profession can safely sanction such delegation. It is stated to assure the public that such individuals have been trained in a program which this College has reviewed and approved and that the demonstration of their proficiency has been by a method which this College has reviewed and in which it has credence. It is meant to imply that medical professional input plays a significant part in the training and assessment components of such programs.

#### G. THE SIZE OF COUNCIL AND COUNCIL ASSISTANTS

*Recommendation 10: That Council increase its size to the maximum allowed by The Health Disciplines Act.*

In considering the current activity of Council, and in particular, the accelerated activity expected with new programs, the Committee felt that there was a need now to make use of the current provision under the Act for increasing the number of members participating in the direct activities of the Council. At present, Council consists of 5 university representatives, 12 elected members and 4 persons appointed by the Lieutenant Governor in Council, for a total of 21. The maximum permissible under the present Act is 5 university representatives, 16 elected members and 6 persons appointed by the Lieutenant Governor in Council, for a total of 27.

They did so after discussing a number of mechanisms which might be available to lighten the increasing load on individual councillors short of changing Council's size.

However, the provision that councillors must staff all statutory committees and the obvious desirability of having direct Council input into other committees brought us finally to this recommendation. Certain committee appointments pose particularly heavy loads (Discipline) and increased Council manpower would allow construction of further panels.

There is also an advantage of increasing the Council presence in districts if more councillors are available.

*Recommendation 11: A system of appointing College assistants in each district be instituted, taking into consideration geography, specialty and profession, and/or public esteem. The number suggested from each district is not to exceed four. Each appointee would be expected to make a time commitment to the College.*

This recommendation has two purposes. First, it could assemble a cadre of members with a real interest and commitment to the College who could by their diversity assist the Council in ad hoc committees, hospital assessment, special assistance teams, and inspections. By being involved in a continuing way, they would quickly become knowledgeable with the workings and responsibilities of the College. Secondly, they would act as District Council Assistants with whom their Councillor could communicate first hand topical information from the College for further dissemination in the district, and the group (the councillor and his assistant) would be a more visible "presence" of the College in each district. Communication with the profession at a local level would be improved.

#### H. PERIODIC REVIEW OF COLLEGE COMMITTEES

*Recommendation 12: That a periodic review by Council of Statutory Committee functions on an on-going regular basis take place.*

The Statutory Committees of Council reflect its major activities and responsibilities. Each reports twice a year to Council on its proceedings. Council therefore has an opportunity to monitor such activities on a regular basis.

What we are recommending is for instance that one committee per year be reviewed by Council, possibly by a councillor not associated with the committee. Such a review would not just look at the day-to-day operations of the committee, but might well comment on the effectiveness of the committee, whether its purpose or its needs are changing or should change, whether its stance is appropriate to the times and so on. We are aware that although we are bound by an Act, there is a hazard that a committee (even a changing one) might become if you like, set in its ways, preoccupied with the problem of the day and not see the need for changing methods or approaches. Such a periodic review would be helpful in producing a fresh, outside overview of these important functions on a regular basis.

During its deliberations, the Committee quickly became aware that much long term planning had already gone on. In



particular, the Ad Hoc Committee on Peer Review and the Education Committee have long term projects under consideration. We are also aware of the planning which went on and was initiated by Council to improve the Discipline procedures, subsequent to the Henry report.

We are also aware that some of our recommendations do not constitute long term planning, but are attempts to firm up principles by which the College functions, and which have long term implications.

But the strongest theme of these recommendations is the proposition that the significance and value of this College as the repository of authority in a self-governing profession needs serious up-grading in the eyes of the public and our own profession. It is our opinion that a vigorous effort in communicating our role to the public and the profession must be undertaken. This is not to be interpreted as an "advertising campaign", but as an "information campaign".

#### Report of the Peer Assessment and Education Committee, p. 15.

The Committee on Peer Assessment and Education, which was created by motion of Council 5-C-4-77 in April 1977, spent considerable effort in studying the very involved and difficult job assigned to it. You will recall the terms of reference given the Committee.

##### TERMS OF REFERENCE:

*"The Committee will consider all aspects of the institution of a peer assessment program, to include criteria to be used, types of persons serving as assessors, decision-making procedure within the College, personnel and financial implications for the College and necessary amendment to legislation. The Committee shall also consider how such a program could be integrated with present College activities of peer review, and shall report with recommendations to the Council in November, 1977, having given the Executive Committee an opportunity to comment upon any recommendations prior to the Council meeting."*

The Committee studied a large amount of material in the medical literature, and held detailed discussions with representatives of the Corporation of Physicians of Quebec, who are involved in the operation of a program designed to ensure ongoing competence of Quebec physicians. In addition, the members of your Committee discussed the philosophy of this type of program with many colleagues, and brought ideas and opinions from these contacts to the deliberations of the Committee.

The Committee became convinced that some type of program to ensure competence is required, if the College is to fulfil its responsibility to the people of Ontario, but it was also convinced of the necessity for a carefully and logically designed program, rather than a complete but hastily framed answer to the Council. Accordingly, the Committee was not able to consider all the matters within its terms of

We are also aware that these recommendations have significant implication with regard to cost and to space. Although we make no specific recommendations in this regard, we urge that this reparative process be regarded as a high priority, and recommend that the mechanism and resources required to do so be facilitated by Council.

The Report of the Committee as a whole was accepted by Council, and the Executive was directed to study and implement Recommendations #1, #3, #4 and #6, and to determine ways and means to proceed with the other Recommendations.

reference, since it was felt that until some evidence was obtained as to the utility of such a program, integration into College peer activities, cost, and details of the administration of a program of this type, could not be properly defined.

The Committee agreed that the purpose of Peer Review in a general sense is to ensure that an acceptable level of competence is maintained by all physicians licensed to practise medicine in Ontario.

The Specific Objectives of Peer Review were considered to be as follows:

1. To identify physicians who are practising at an unacceptable level in general, or in specific areas.
2. To designate remedial actions to correct the deficiencies identified.
3. To ensure that the remedial actions have been effective.

The Committee looked at the alternatives of relicensure by examination, compulsory continuing education requirements, self-evaluation computer examinations, and is of the opinion that an on-site inspection by a peer or peers was the only method likely to accomplish the objectives. Whether or not this method could meet the objectives could only be decided after experience was gained with such a program.

Accordingly, the Committee was in favour of the College organizing a pilot study, to be designed as a feasibility program, to gain experience in on-site peer assessment. It was the feeling of the Committee that this project must be non-punitive in nature, and aimed at accomplishing the following:

- a) determining whether or not the findings of the program validate the need for a program of this type at all;
- b) determining whether the information obtainable from on-site assessment is adequate to identify unacceptable levels of practice;



- c) devising and validating a standard reporting system as a tool to be used by peer assessors;
- d) attempting to determine whether this type of on-site peer assessment should be done by part-time peers in practice, or whether full-time assessors would be preferable; and
- e) ascertaining the kind of educational program that would benefit any physician identified as practising at an unacceptable level.

The Committee feels strongly that assessment reports should be reviewed by a College committee appointed for the purpose, and that any decision as to necessary remedial education, or other action, must be the responsibility of that Committee. It is anticipated that if any decisions were contemplated that necessitated action interfering with a physician's practice, that the physician concerned would be interviewed and the matter discussed in detail with him.

It was the opinion of the Committee that for the pilot project, a random sampling of the profession should form the basis of the sample, and that in addition, a random sample of physicians who practise in isolation from colleagues and/or hospitals should be included. The inclusion of this specific group of physicians is based on the experience of the Quebec program, which has found within its ranks a relatively high need for remedial educational assistance.

The Committee was sensitive to the need that a program of this type would have to be shown to the profession as desirable and necessary, and above all, as fair and helpful to the profession. The Committee felt that the profession should be told of the College's intentions, and asked, not whether they agree with the principles, but for suggestions as to how the program could be designed as fair, accurate, and effective.

The emphasis has to be on the educational role of the

program, with the assurance to the profession that it is not designed as, and will not be used as, a method of grading for physicians into categories of competence, but is specifically aimed at the identification and correction of an unacceptable level of practice.

The Committee, therefore, would make the following recommendations:

1. That the Council approve the institution of a pilot project on peer assessment, using on-site peer evaluations.
2. That a committee be struck by the Executive Committee to organize the pilot project, with particular respect to
  - i the format of the on-site visit,
  - ii the design of the reporting form,
  - iii the determination of means of acquiring input by the profession with respect to procedures and methods, and
  - iv the formulation of recommendations with respect to support staff, and a proposed budget.
3. That a budgetary allowance of \$100,000 be allocated in the 1978 budget of the College to fund the pilot project, in its initial phase, until a more detailed budget is approved.

The recommendations of the Committee were accepted by Council, with the addition of a fourth item:

4. That an initial information program directed to the profession explaining the reasons for this pilot project be instituted in advance of the pilot project.

The new committee will report to Council with a planned program, for approval, prior to any action.

If members of the College have any proposals or comments which they feel might be germane to the responsibilities assigned to this committee, these should be directed to the Registrar.

## NOTICE

During the past year the College has received a substantial number of complaints relating to what is alleged to have been improper conduct on the part of a physician while carrying out a gynaecological examination.

None of these complaints after being considered by the Complaints Committee have been referred to the Discipline Committee for a hearing. In one instance, the case was referred to the Health Disciplines Board, as the complainant disagreed with the decision of the College. After reviewing the material available to the Complaints Committee and questioning the complainant and the physician concerned, the Health Disciplines Board confirmed the decision of the Complaints Committee of the College.

It should be pointed out that while the circumstances surrounding these incidents may vary, the examination having taken place in a physician's office, the patient's home, and even in an out-patient department of a hospital, in all cases there was no third party present.

While the College recognizes that it may not be practical to have a third party in attendance in all instances during a gynaecological examination, it nevertheless wishes to draw to the attention of the members of the College that it would be wise for all physicians to exercise discernment in determining those situations where such a precaution would be advisable.

Since the last meeting of this Council, the Medical Review Committee has met on fourteen days for regular meetings in addition to its hearings and hearings before the Health Insurance Appeal Board. During that time 59 new referrals have been considered and in addition, 42 reports of medical and financial inspectors appointed by the Committee to obtain further information regarding referrals previously received have been reviewed. Thirty-nine doctors have been interviewed and tentative decisions made. It would be a fair assessment to make that while the volume of work of the Committee remains approximately steady since our last report, the nature of the cases which happen to have arisen during this period of time may have been somewhat more complex and protracted than is usual.

Certain matters which have come to the Committee's attention in the course of their review of accounts referred by the General Manager of the Health Insurance Plan deserve to be brought to the attention of Council. The Committee has been concerned with a significant number of accounts for the service of psychotherapy which have been rendered in circumstances which inspection suggests do not meet the Committee's view of what is an appropriate standard of practice for psychotherapy in Ontario.

The Committee looks to and accepts the O.M.A.'s definition of psychotherapy as set out in the Schedule of Fees, namely "any form of treatment for mental illness, behavioural maladaptations and/or other problems that are assumed to be of an emotional nature, in which a physician deliberately establishes a professional relationship with a patient for the purposes of removing, modifying, or retarding existing symptoms, of attenuating or reversing disturbed patterns of behaviour, and of promoting positive personality growth and development". It will be recognized that this definition provides for a wide variety of treatment modalities. Distressingly, a number of physicians have taken the position that no medical record can or should be kept in the case of psychotherapy. This position appears to be based (a) upon the idea that the patient will not communicate freely with the physician if he knows that a record will ultimately be made of the nature of his problem, or (b) upon the physician's concern about the ultimate confidentiality of these records. On the other hand, the Committee has as a mainstay of peer review reviewed physicians' records in order to obtain evidence that the service has been rendered in appropriate fashion and was of acceptable quality. The Committee does not contend that the review of records in and of itself is the only legitimate tool of peer review but on the other hand, it is fair to say that a review of physicians' practice records in the past has served as a useful way of drawing some conclusions about the quality of the physician's work and the nature of the services rendered. The Committee, therefore, considered the question of appropri-

ate standards for practice records in psychotherapy. The Committee consulted various authoritative professional psychiatric bodies and sought peer opinion with respect to such matters and concluded that the physician should keep normal patients' records as required by the regulations under *The Health Disciplines Act* and that such records ought to indicate and state in some reasonable diagnostic terminology the presumptive nature of the illness or problem being dealt with and some idea of the history of its origin. In addition, it was felt that such records ought to state a plan of treatment or approach to the identified problem together with some rationale for this plan and a presumptive diagnosis. Followup of progress records of psychotherapeutic treatment over lengthy courses, it was felt, should also indicate the patient progress on therapy. The Committee recognized that all of such elements may not appear in the record of the first or even the first few visits in the course of psychotherapeutic contact but it was felt that the application of these criteria reasonably to the whole of a patient's record was in accord with the appropriate standard of practice in Ontario whether for consultants or general physicians.

Your Committee has taken this matter up with the Ontario Medical Association and it is hoped that a reasonable standard can be agreed upon and will form the basis for proper practice in the future. In addition, it is hoped that the fee for counselling recently introduced in the Schedule of Fees can be rationalized into this structure.

Another area of concern recently has been referrals of certain practices in which proctoscopy (not to be confused with sigmoidoscopy or proctosigmoidoscopy) has been a very prominent feature. After soliciting a substantial number of peer opinions in the fields of general surgery and gastroenterology, the Committee was of the view that proctoscopy or anoscopy had no value as a routine screening procedure for the detection of asymptomatic colonic or rectal disease. The Committee took the view that proctoscopy or anoscopy was medically useful for further investigation of significant symptoms or signs relative to the anorectal region and should not be used in the nature of a screening tool in patients without well documented histories, signs, or symptoms suggestive of anorectal disease. For this reason, the Committee could not agree with the position taken by some members that proctoscopy was an essential part of an annual health examination. The Committee was of the belief that the fee for this service should certainly be paid where the signs or symptoms indicated its use. This matter also has been brought to the attention of the Ontario Medical Association by your Committee.

In a similar vein, the Committee was concerned to review a number of practices in which repeated intramuscular injections of vitamin B12 on a weekly or biweekly basis were



administered to patients with no medical indications for this treatment recorded. Peer opinions suggested that aside from certain hypercatabolic states encountered in the practise of cancer therapy and aside from pernicious anemia, the injection of B12 on such a repeated basis is not medically necessary.

The Committee considered the application of acupuncture to the treatment of obesity and smoking and discovered that there are a certain number of practitioners treating patients for these conditions by the application of small thumbtack like devices to the posterior portion of the earlobe or by the depositing of small metallic pellets in the external ear canal ostensibly as a form of acupuncture. The Committee was further distressed to find that in a number of practices this was the only modality of treatment ever applied by the practitioner in question. Without exception, these practices always charged a general assessment for every patient seen and there were even cases in which consultations were charged even though patients were, for the most part, self-referred or referred by general physicians as a matter of convenience. The Committee was hesitant to suggest that general assessments prior to the institution of acupuncture were inappropriate for there may obviously be situations in which true acupuncture may be applied by ethical physicians who do require thorough assessment of the patient before applying such a modality. On the other hand, the Committee found it a little strained to accept the proposition that such services were always necessary in the case of the application of these ear tacks or pellets.

The Committee also had occasion to study the techniques of "biofeedback" as they relate to the practice of psychotherapy. It has been observed that the practice of "biofeedback", when based upon galvanic skin resistance, alpha-theta wave monitoring, or eidetic imagery, relies upon the principle that psychological states and certain autonomic nervous functions are related. While this fact has been recognized by physicians for many years, the relationship of the galvanic skin resistance, alpha-theta wave monitoring, or eidetic imagery to internal psychological states and other physiological variables, is not currently established. The Committee concluded that the use of biofeedback based upon galvanic skin resistance, alpha-theta wave recordings, or eidetic imagery to monitor nervous activity levels, internal psychological states, or other physiological variables, is not properly considered to be a medically necessary service at this time. The use of biofeedback in the treatment of migraine headaches, hypertension and vascular insufficiency is still in an experimental stage and the Committee believes that when valid scientific evidence is available that this is an effective modality in the treatment of these conditions, it should be considered a necessary service. In the meantime, the Committee was of the view that such a form of treatment is not medically necessary. Biofeedback treatment, based upon the recording of electromyographic activity or electroencephalographic tracings properly measured to monitor muscular or

cerebral activity for the treatment of neuromuscular disorders and/or epilepsy, was established as a medically necessary service at this point in time.

The Committee was obliged to review a number of anaesthetic practices during recent months in which claims for controlled or induced hypotensions were very high. The Committee considered widespread peer opinion as to the appropriate practise of and necessity for this modality. As with any technique, a list of absolute contraindications could be drawn as well as a list of likely indications. The area in between poses a number of problems in that there are differences of opinion as to the indications for and extent to which hypotension should be used. The Committee considered these criteria and set out its proposal for reasonable indications for this treatment and reasonable standards for its practice. As with all the foregoing, these proposals have been brought to the attention of the Ontario Medical Association and it is hoped, with their assistance, that the matter may be resolved.

Similarly, the Committee was concerned about a number of cases referred to it regarding anaesthetists who billed for almost every newborn patient for anaesthesia at obstetrical confinement, with the extra fee provided for resuscitation of the newborn. The Committee also proposed reasonable standards for differentiating unusual efforts at resuscitation justifying this extra fee from the usual minimal suctioning, mask ventilation and slap on the behind which were felt not to justify extra billing. It is hoped that with the assistance of the Ontario Medical Association this matter may also be clarified for the benefit both of the public interest and the profession.

Since our last report, the Committee has had the unfortunate duty of dealing on behalf of the College with a number of referrals which have brought to our attention practices which no ethical physician would condone. A routine review of several physicians rendering unusually high volumes of nursing home care ultimately revealed large numbers of services which were apparently not being rendered by the physicians in the volume claimed and for which in many cases, apparently fictitious records had been created. In another case, the routine investigation of an unusual pattern of practice regarding volume of night house calls revealed a massive pattern of deception on the part of a physician reaching into almost every facet of his practice and affecting not only his honesty of billing but also his quality of professional service.

The review of a number of physicians on the basis of unusually small practice volumes revealed several unfortunate individuals apparently suffering from conditions such as would draw their fitness to practise medicine in question. The Committee has, as has always been its policy, immediately upon discovering such practices which may constitute dishonesty or otherwise affect a physician's fitness to be suitably to practise medicine, referred the matter to the appropriate authorities. In the case of fitness to practise or disciplinary matters, this is the Registrar of the College and in the case of apparent dishonesty, the appropriate police

authorities are notified

Your Committee has continued to the best of its ability to carry the very heavy load of referrals referred by the General Manager and welcomes in this endeavour new members appointed to the Committee effective September 1977, Dr. Fred L. Johnson of this Council and Dr. John McCabe of the City of Windsor. At the same time, the Committee is very mindful of the extensive contributions above and beyond the call of duty by members recently retired from the Committee and on behalf of the Committee, I wish to express our personal gratitude and urge that this Council express their gratitude to Dr. James F. Ballantyne and Dr. Douglas E. Crowell for their years of diligent and arduous service.

The Medical Review Committee has, during its period of existence, seen difficult times. Indeed this was to be expected when the public interest and service to the profession's interest required the introduction of new concepts and unfamiliar ideas to a medical profession already beset by the effects of social and economic change. Your Committee is cognizant of these difficulties but hopes that in coopera-

tion with this Council and with the Ontario Medical Association, both of whom have so frequently and graciously extended helping hands, that we may continue to demonstrate that the medical profession of this Province is responsibly capable of self-government and self-discipline. It is your Committee's respectful view that a number of changes in the format of its activities may be desirable to promote these ends and no doubt this Council will have an opportunity to consider those changes. Notwithstanding that, your Committee is of the view that we must somehow make this concept of retrospective peer review work and your Committee rededicates itself to this Council and to the membership of the College to do its utmost in this direction. The alternatives to peer review when examined in the light of the public interest in receipt of optimal health care and the interest of the medical profession in Ontario, are too unacceptable even to receive consideration.

Your Committee expresses its appreciation for your support in the past and looks forward to your input and assistance in the future.

## Special Notices, p. 20

### Professional conduct of Members

Practitioners are reminded that in entering upon the practice of medicine they undertake a life of service in which the needs and best interests of their patients must always be paramount, and that the self-interest and competitive practices acceptable in commercial enterprises have no proper place in the profession of which they are members.

From the time of Hippocrates there has existed and been developed by tradition a code of professional conduct that is known to the knowledge of all members of the profession quite apart from any written regulations or Code of Ethics that may be drawn up for the guidance of members. The College has adopted the Code of Ethics of the Canadian Medical Association. A copy may be obtained without charge from the Registrar and all members are urged to familiarize themselves with its contents, bearing in mind that the Code is only a guide and does not bind or limit the Discipline Committee of the College in determining whether professional misconduct has occurred. According to the right of judicial authority the members of the Discipline Committee who are members of the College having knowledge of the traditional standards of professional conduct are entitled to judge whether any offence has been committed that amounts to misconduct in a professional respect or conduct unbecoming a medical practitioner.

### Regulations defining professional misconduct

For the purpose of the Medical Part of The Health Disciplines Act, "professional misconduct" is defined in Section 26 of O.R. 577/75, a regulation made by the Council and approved by the Lieutenant Governor in Council. Professional misconduct is defined in the Regulations under thirty-one general categories, as follows,

1. failure by a member to abide by the terms, conditions or limitations of his licence;
2. contravention of any provision of the Medical Part (Part III) of **The Health Disciplines Act, The Health Insurance Act, 1972** or the regulations;
3. failure to maintain the records that are required to be kept respecting a member's patients; (Reference: Section 28 of O.R. 577/75)
4. having a conflict of interest; (Reference: Section 27 of O.R. 577/75)
5. using a term, title or designation other than one authorized or using a term, title or designation that is prohibited by this Regulation;
6. permitting, counselling or assisting any person who is not licensed under Part III of the Act to engage in the practice of medicine except as provided for in the Act or this Regulation;
7. charging a fee that is in excess of the fee in the schedule of fees of the Ontario Medical Association without prior notification to the patient as to the excess amount of the fee;



[NOTE: "prior notification" means notification before the service is performed. It may be given verbally or in writing but a sign in the office is not acceptable.]

8. charging a fee that is excessive in relation to the services performed; (Reference: Principles Governing Proper Professional Charges on page 22)
9. failure to carry out the terms of an agreement with a patient;
10. selling a professional account to a third party; [NOTE: The College does not prohibit the use of credit cards in payment of physicians' accounts.]
11. refusing to render a medically necessary service unless payment of the whole or part of the fee is received in advance of the service being rendered;
12. requiring payment for a service that is insured under **The Health Insurance Act, 1972** as a condition to be met before completing a claim card for submission under that Act or, before providing an itemized account of the services where a request is made for an itemized account by the patient or a representative of a patient;
13. offering a reduction for prompt payment of an account;
14. charging a fee for services not performed;
15. falsifying a record in respect of the examination or treatment of a patient;
16. knowingly submitting a false or misleading account or false or misleading charges for services rendered to a patient;
17. announcing or holding out to the public that the member is a specialist or is specially qualified in a branch of medicine where the member is not qualified as a specialist; (Reference: Section 22 of O.R. 577/75 governing the recognition of specialists and use of specialty designations.)
18. engaging in the practice of medicine while the ability to perform any professional service is impaired by alcohol or a drug;
19. contravening while engaged in the practice of medicine any federal, provincial or municipal law, regulation or rule or a by-law of a hospital designed to protect the public health;
20. failure to maintain the standard of practice of the profession;
21. giving information concerning a patient's condition or any professional services performed for a patient to any person other than the patient without the consent of the patient unless required to do so by law;
22. failing to continue to provide professional services to a patient until the services are no longer required or until the patient has had a reasonable opportunity to arrange for the services of another member;
23. making a misrepresentation respecting a remedy, treatment or device;
24. failing to reveal the exact nature of a secret remedy

following a proper request for such information;

[NOTE: A "proper request" would be a request made by the College or by a member who is treating the patient.]

25. improper use of the authority to prescribe, sell or dispense a drug, including falsifying a record in respect of a prescription or the sale of a drug; [NOTE: A member who sells or dispenses a drug to his patient shall comply with the provisions of Section 27 and Sections 29 through 38 of O.R. 577/75 relating to the prescribing, dispensing and sale of drugs by members.]
26. failing to provide within a reasonable time and without cause any report or certificate requested by a patient or his authorized agent in respect of an examination or treatment performed by the member;
27. failing to carry out the terms of an agreement or contract with a hospital;
28. sexual impropriety with a patient;
29. sharing fees with any person who has referred a patient and receiving fees from any person to whom a member has referred a patient or requesting or accepting a rebate or commission for the referral of a patient;
30. publishing, displaying, distributing or using or permitting, directly or indirectly, the publishing, display, distribution or use of any advertisement related to the practice of medicine by a member other than,
  - (i) professional cards that contain only the name of the member, a vocational designation, academic degrees, the member's address and telephone number,
  - (ii) an announcement upon commencing practice or changing the location of a member's practice that,
    - a. does not exceed two standard newspaper columns in width and ten centimeters in depth,
    - b. does not contain references to qualifications, procedures or equipment but may contain academic degrees, and
    - c. does not appear more than three times in a newspaper in respect of the commencement of the practice or of a change in the location of the practice,
  - (iii) appointment cards that do not contain more than the information contained in a professional card and the time and date of the appointment or appointments,
  - (iv) a telephone directory listing,
    - a. in the white pages that,
      - i. is of dark or light type,
      - ii. where a member is a certificated specialist may indicate the specialty designation,
      - iii. where a member who is not a certificated specialist restricts his practice to one branch of medicine may insert after his name "Practice limited to .....
    - b. does not list office hours, and
    - c. where the practice of medicine is carried on

as a partnership, clinic, medical centre or other form of medical group lists the name of the partnership, clinic, medical centre or other form of medical group and the names of the members with their designations thereunder;

b. in the yellow pages that,

- i. is listed only in the section "Physicians and Surgeons";
- ii. is only of light type;
- iii. where a member is a certificated specialist may indicate the specialty designation;
- iv. where a member who is not a certificated specialist restricts his practice to a branch of medicine may insert after his name "Practice limited to .....",
- v. does not list office hours;
- vi. is listed only in the telephone listing for the geographical area in which the member is engaged in the practice of medicine; and
- vii. where the practice of medicine is carried on as a partnership, clinic, medical centre or other form of medical group lists only the name of the partnership, clinic, medical centre or other form of medical group and lists the names of the members in their alphabetical order in the yellow page section;

31. conduct or an act relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional O. Reg. 577/75, s. 26 O. Reg. 631/77.

#### Principles governing proper professional charges

1. Any agreement between physician and patient or representations made by the physician to a patient as to the physician's professional charges should be reasonable. The physician shall scrupulously carry out the terms of any such agreement or representation.
2. The professional charges of members of the College should take into account and be governed by the following factors:
  - (a) The qualifications and professional standing of the member.
  - (b) The degree of skill exhibited.
  - (c) The time required in rendering the service.
  - (d) The circumstances in which the services were rendered—office, home, hospital or elsewhere; day or night, emergency or routine.
  - (e) The responsibility involved.
  - (f) The attitude and demands of the patient.
  - (g) The geographical area in which the services are rendered.
3. Under the provisions of Section 26 of O.R. 577/75 the following are defined as "professional misconduct",
  - (a) charging a fee that is in excess of the fee in the schedule of fees of the Ontario Medical Association

without prior notification to the patient as to the excess amount of the fee;

- (b) charging a fee that is excessive in relation to the services performed;
- (c) failure to carry out the terms of an agreement with a patient.

#### Use of Specialty Designations

Section 22 of O.R. 577/75 provides that, a member to whom a certificate in a specialty has been issued by The Royal College of Physicians and Surgeons of Canada may use a designation for the specialty approved by The Royal College of Physicians and Surgeons of Canada.

It has been the policy of the College of Physicians and Surgeons of Ontario that those Certificated by the Royal College and who by training are qualified to practise in a field not included in the Royal College designations, may use one of the generally recognized designations, e.g. cardiologist, allergist, etc.

In Section 26 of O.R. 577/75 announcing or holding out to the public that the member is a specialist or is specially qualified in a branch of medicine where the member is not qualified as a specialist, is defined as professional misconduct.

#### Students of Ontario Medical Schools entitled to perform services

Section 52 of **The Health Disciplines Act** provides that "no person shall engage in or hold himself out as engaging in the practice of medicine unless he is licensed under this Part". But the Act goes on to provide that this prohibition does not apply to a student of medicine engaging in a curriculum of studies at a medical school in a university in Ontario. This exemption does not apply in the case of a student of a medical school outside Ontario who is employed as a summer "intern", clinical clerk or extern by a hospital in Ontario unless he is enrolled as a student in a faculty of medicine in Ontario.

#### Prescribing privileges of Interns

An intern registered on the Educational Register may write prescriptions only for the in-patients or out-patients of the hospital or teaching practice in which he is training. He is not permitted to purchase, order or possess Narcotics or Controlled Drugs; nor is he permitted to order or receive complementary samples of these drugs.

#### Disciplinary action by a Hospital

The Public Hospitals Act, R.S.O., 1970, c. 378 as amended by 1972, Chapter 90 provides that:—

"Section 40. Where

- (a) the application of a physician for appointment or reappointment to a medical staff of a hospital is rejected by reason of his incompetence, negligence or misconduct;
- (b) the privileges of a member of a medical staff of a hospital are restricted or cancelled by reason of his incompetence, negligence or misconduct; or

- (c) a physician voluntarily or involuntarily resigns from a medical staff of a hospital during the course of an investigation into his competence, negligence or conduct.

the administrator of such hospital shall prepare and forward a detailed report to The College of Physicians and Surgeons of Ontario. 1972, c. 90, s. 22."

### **Cancellation of Licence for Default of Fees**

Section 47 of **The Health Disciplines Act, 1974** authorizes the cancellation of a licence for non-payment of any prescribed fee after giving the member at least two months notice of the default and the intention to cancel the licence.

Members are cautioned that the Act states that "no person shall engage in or hold himself out as engaging in the practice of medicine unless he is licensed under this Part"

### **Penalty for non-payment of Licence Fees**

Members are reminded that during the period a licence is cancelled for non-payment of fees the former member may not charge fees for services rendered to patients during the period of cancellation, and fees already paid to the physician for services during the period of cancellation are subject to recovery by OHIP or patients. This can be a severe penalty if the time period involved is of any length.

The cancelled licence may be re-issued upon payment of the fees that were due and an additional fee of \$25.00. The date of issuance of the licence will be the date upon which these fees are received by the College.

### **Expiry Date of Licences**

Each member's Certificate of Licence shows the date upon which it expires. Those whose surnames begin with one of the letters A to L hold certificates that expire two calendar months after their birth dates in even-numbered years, e.g. 1976. Those whose surnames begin with one of the letters M to Z hold certificates that expire two calendar months after their birth dates in odd-numbered years, e.g. 1977.

### **Resignation of Membership**

A member who ceases to practise in Ontario may resign his membership by filing with the Registrar his resignation in writing and his licence is thereupon cancelled subject to the continuing jurisdiction of the College in respect of any disciplinary action arising out of his professional conduct while a member.

Before re-entering practice in Ontario a former member is required to re-apply for a licence and must comply with the requirements set out in the Regulations governing the issuance of that class of licence. The applicant is not authorized to practise in Ontario until the licence has been issued.

### **Employment of a Locum Tenens**

Before engaging a locum tenens a member should obtain assurance from the College that the prospective locum is eligible for a licence to practise in Ontario, and is in fact licensed before he commences to practise.

### **Dispensing Fee**

The College does not consider it to be a conflict of interest situation for a physician to charge a dispensing fee, as laid out in the OMA tariff, in circumstances where he provides a drug to a patient.

### **Physicians Listing in Regional Directory**

Members are advised that announcements concerning physicians which appear in any publication other than those permitted by the regulations will be considered as advertising by the College.

### **Advertising Guidelines**

The following guidelines have been developed to assist Officers of the College in responding to inquiries which relate to advertising and the soliciting of patients.

#### **1. Signs**

- (1) A sign should be "in good taste" and not in contravention of any municipal by-law or ordinance. A sign may be illuminated if municipal by-law permits, but not "flashing".
- (2) For an individual practitioner, a sign not more than 36 inches long and 8 inches high would appear to combine the best features of clarity and dignity.
- (3) The maximum height of lettering of signs should not exceed four inches. Lettering on doors and directories should not exceed two inches.
- (4) Contents of signs may contain only the name of the member, academic degrees, and a vocational designation.

Academic degrees include those granted by the Medical Council of Canada, The Royal College of Physicians and Surgeons of Canada, and The College of Family Physicians of Canada.

A vocational designation of a specialty may be used only when a member holds Royal College qualifications in that specialty. A member may designate that his practice is "limited to" one branch of medicine.

- (5) Office hours may be placed on the door or on an adjacent window of the office.
- (6) For medical clinics, centres, groups, etcetera, the sign may include the name of the clinic, centre or group. The maximum size of the lettering on the sign should not exceed 12 inches.  
The names of the members of the group may be listed on a directory panel showing their vocational designation. The maximum height of lettering on the directory panel should not exceed two inches.
- (7) Where a proposed sign does not comply in all respects with the aforementioned guidelines, it may be helpful to seek the approval of the local medical society.

#### **2. Professional Cards**

- (1) The inclusion of office hours, and any limitation of practice is acceptable on professional cards.



**3. Announcements upon commencing practice or changing location**

- (1) It is considered in the best interests of the patient for a member to advise those under active treatment and seen within the previous six months of a change in office location. It is left to the member to determine the most appropriate means of communicating this information. Where a physician leaves a clinic or group practice, he would be well advised to obtain the agreement of his partners on the list of patients to be notified.

**4. Appointment Cards**

- (1) In addition to the physician's name, qualifications and location, it would be appropriate to include office hours, phone number and any limitation of practice on appointment cards given to patients.
- (2) To comply with the Preamble of the Ontario Medical Association Schedule of Fees, advice regarding charges for missed or cancelled appointments is permitted on appointment cards.
- (3) The recall of patients by telephone is permitted only to remind patients receiving specific treatment of an on-going nature of a pre-arranged appointment.



APPENDIX IX - REPORT OF THE LAY OBSERVER

**FIRST ANNUAL REPORT OF THE LAY OBSERVER UNDER SECTION  
45 OF THE SOLICITORS ACT 1971**

*To the Right Honourable the Lord Elwyn-Jones,  
Lord High Chancellor of Great Britain*

I have the honour to submit my annual report for my first year in office, which began on 17th February 1975.

2. Your Lordship appointed me Lay Observer in the exercise of your powers under section 28A of the Solicitors Act 1957 (a new provision added in 1974 and now re-enacted in section 45 of the Solicitors Act 1974). Under your statutory powers your Lordship has also given general directions to me about the scope and discharge of my functions. Section 45 of the Solicitors Act 1974 and the general directions under that section are set out in Appendix I to this report.

3. Under section 45 it is my task "to examine any written allegation by or on behalf of a member of the public concerning The [Law] Society's treatment of a complaint about a solicitor or an employee of a solicitor made to the Society by that member of the public or on his behalf". I am also required by paragraph 6 of the general directions to submit to your Lordship an annual report on the discharge of my functions.

4. In relation to my functions I wish to emphasize two points. Firstly, my principal task is to examine The Law Society's treatment of a complaint against a solicitor, not to examine the complaint itself. Nevertheless, it is inevitable that in carrying out this task I should satisfy myself about the true nature of the complaint and in this sense I am bound to examine it. Secondly, I have given a liberal interpretation to the requirement to report on the scope and discharge of my functions, for although my principal function is a limited one, in exercising it I have gained impressions and formed ideas ranging far outside the narrow field of the investigation of complaints relating to professional conduct.

**REVIEW OF WORK DONE DURING THE YEAR**

5. 437 correspondents have represented their problems to me. About one-third of these have raised matters which had been, or were subsequently, represented to The Law Society as complaints about a solicitor's conduct. The remainder have made criticisms or requests for information on a wide variety of subjects within the whole process of law which have been outside my statutory powers to examine. Where appropriate, I have referred these complainants to other authorities or organisations.

6. 17 allegations have concerned complaints which proved to have been determined by The Law Society before 1st January 1975. In these cases I limited myself to ascertaining from the Society whether the determination had been made before that date. Three cases where the determination seemed incomplete were referred back to The Law Society and resolved.

7. In 162 cases I have made enquiries into The Law Society's treatment of a complaint and in 140 I have completed my examination.

8. In 26 of the cases which I have examined, I invited The Law Society to seek, or myself sought, further observations from solicitors where I felt fuller

explanation was required or desirable for the complainant. In 13 cases I informed The Law Society that I felt its treatment incomplete but in 11 of those cases I agreed with its eventual decision that an issue of conduct was not in question or substantiated. In two cases I recommended that the Society should reconsider the complaint as raising an issue of professional conduct and in both cases the Council of the Society subsequently informed the solicitors that their conduct was deprecated.

9. I have not sent solicitors copies of my case reports where the issues have clearly not concerned conduct and The Law Society has not previously communicated with them, unless there seemed to be a positive advantage in doing so.

10. I have seen 60 individuals in personal interview and have helped some to understand what complaints The Law Society has power to investigate and (I hope) helped some to decide on priorities for action.

### THE LAW SOCIETY

11. Strictly speaking, my function is limited to examining The Law Society's treatment of complaints about a solicitor's conduct and, as indicated above, I have found relatively little cause for criticising the way in which the Society has carried out its responsibilities within its powers.

12. No allegation has been made to me that outright financial dishonesty has been incompletely considered by the Society (save one where the Society had already initiated disciplinary proceedings and a few where dishonest motives were inferred from facts which plainly gave no grounds for such an inference). This negative experience leads me to feel that The Law Society is thorough in dealing with these serious matters.

13. I have found it very difficult to gauge what is a reasonable time for The Law Society to deal with a particular case. I have on occasions urged swifter action when an undecided complaint is referred to me and there have been cases when I have been aware that the Society has been overwhelmed by the volume of correspondence, the mass of documents or the number of alleged misdeeds. In complaints which traverse various matters, not all within the Society's scope to consider, it is for the Society to judge how extensive its investigations should be: it is not always possible to dot every i and cross every t. In a number of these multiple complaints I have sought the solicitors' further comments or criticised details of the Society's treatment, without disagreeing with its overall determination. Occasionally I have felt that the Society should have reached its decision earlier than it did.

14. I have seen cases of protracted correspondence between The Law Society and complainants who continually rephrase or add to their complaints, with the result that the solicitors have difficulty in giving precise answers. This is an unsatisfactory but inevitable consequence of the system of written representations. From my limited experience it is my impression that much of the work of The Law Society would be reduced and speeded up if the public had a greater understanding of the law and legal processes—a matter to which I return later in this report—and if every solicitor were to give his client early and sufficient explanations of the issues involved.

15. The Law Society, having given a decision on a complaint which the complainant does not accept and on which he continues to correspond, may inform him that no further letters will be answered. I do not criticise this procedure, but in one case I invited The Law Society to consider a later letter as amounting to a fresh complaint.

16. In virtually all cases the main allegation to me has been that the decision of the Society was wrong and has often been coupled with allegations that the investigation should have been wider in scope, for instance by questioning

witnesses or seeking information from court records. It is not generally appreciated that The Law Society's powers are limited by its Charter and by Act of Parliament and that it has no power to summon witnesses or order a solicitor to compensate a client. Whilst the Society endeavours to make clear that it cannot consider matters of law or give legal advice, there are those who believe it to be a form of court and feel that issues are being evaded when no opinion is expressed.

17. In examining the Society's treatment of a complaint I have considered not only how it has pursued its enquiries but how the actions of the solicitor have struck me as an independent layman. I cannot comment on issues of law, the competence shown in handling affairs or the fees chargeable, but there seem to me areas in the professional practice of solicitors which may not be wholly satisfactory for the public. I say "may" because experience is slow to accumulate and my sample small compared with the whole range of a solicitor's responsibilities.

18. Although the Law Society does not keep detailed statistics about the nature of complaints, I understand it finds that only about 25 per cent. of complaints received raise possible issues of professional conduct. A large proportion of the remainder appears to be outside the Society's powers to determine and no doubt some are frivolous or vexatious. The cost of the Society of dealing with complaints by the public is of the order of £100,000 a year and yet there are times when its staff are hardly able to keep abreast of correspondence. It must be a cause for concern that effort on such a large proportion of complaints is nugatory. For this reason I have been concerned to study the nature and circumstances of the complaints more deeply than my function strictly requires: there appears to be a considerable measure of public discontent which cannot be wholly attributed to the bitterness a man feels when he has lost a dispute.

### Negligence

19. There are suggestions of negligence in a large proportion of complaints made to the Law Society and subsequently referred to me, varying from assertions of a definite error by the solicitor to criticism of his advice.

20. The complex problems with which solicitors deal are often open to different opinions and approaches, particularly before all the relevant information is available or assessed. Clients dissatisfied with the conclusion of a matter sometimes feel that if it had been differently handled, with more weight put on the relevance or importance of particular factors, the result would have been more in their favour. Briefly, they cannot accept the outcome. They subsequently appeal to The Law Society and are aggrieved that the Society cannot consider questions of law and that further funds must be put at risk for obtaining legal advice from an independent solicitor.

21. In some cases the client represents the matter as an issue of conduct (and, indeed, the dividing line between negligence and misconduct may be elusive) and is disgruntled when told that the question of negligence must be disposed of before the question of misconduct can be investigated. Viewed dispassionately, the procedure is logical in that The Law Society has not the powers of a court and its enquiries could prejudice either solicitor or client in the legal action. But the aggrieved client is not at all dispassionate and, seeming to get no support from The Law Society, may deduce that all solicitors are a mutually supporting closed shop.

22. The Law Society is very careful not to express an opinion on whether there has been negligence or not. There are those who conclude from this that they have a case because The Law Society has not denied it. When several other solicitors have expressed a negative view (and charged for their work) these clients further conclude that "you cannot sue a solicitor".

23. Such experience as I have does not support this conclusion where an error has plainly occurred. But I have not found it possible to form an opinion on more complex issues where interpretation of the law or the advice given has been in question. On occasions I have wondered how complete has been the explanation of advice that there is no case, and there appear to be clients who regard with considerable suspicion a solicitor's valid reasons for not acting, such as a conflict of interest or lack of requisite specialist experience. Since some aspect of negligence is alleged in so many complaints I believe that there is a need for the public to have confidence that they can readily get impartial and expert advice when they are considering proceedings against a solicitor. I have given much thought to this in the past year.

24. It seems to me that lists of solicitors who have the skill and experience for professional negligence litigation should be compiled and available to the public on demand. It may well be that the client would choose a solicitor remote from the area of practice of the solicitor against whom negligence is alleged and that any legal aid application should be dealt with outside that area. The present process of clients hawking these affairs to solicitors haphazardly recommended by friends or bank managers does not make for public confidence in an aspect of the law where suspicion of excessive professional loyalty is inevitable.

#### Competence

15. An allegation that a solicitor has not handled the client's affairs with complete skill is implicit in a number of the complaints made to The Law Society and referred to me. I have neither the experience nor the knowledge to form adequate opinions in individual cases, although I am convinced that some disappointed litigants instinctively assume that their solicitors must have been at fault.

26. There are some cases, however, particularly those which have proceeded slowly, in which I have the impression that one party's solicitors have acted with greater forcefulness and experience than the other's. I hesitate to conclude that the more skilled take advantage to delay the proceedings unduly, but the possibility of an obstacle to the administration of justice is present particularly where the plaintiff is a man of limited means and the defendant is, or has the backing of, a wealthy organisation given to instructing solicitors of vast experience in this type of litigation. For example, a fatal accident claim which came to my attention has still not been brought to a hearing after six years, although criminal proceedings were completed within four months of the accident, and I can only deduce that the plaintiff's solicitors lacked the forcefulness and perhaps the expertise of their opponents.

27. I feel there is need for the public to have more information on the experience and specialized fields of firms of solicitors; for a system of control to prevent solicitors dealing with matters of which they have little experience; and for the timing of negotiations and subsequent proceedings before trial to be more precisely regulated. In brief, a client should have confidence that the solicitors he instructs will not be lacking the skill, experience and procedural armoury to match his opponents.

28. Professional competence is also affected when a solicitor or firm of solicitors simply takes on too much work and is unable to give individual cases the attention they deserve. In those cases where I have had this impression, questions of negligence, competence and conduct have been raised and there have been complaints of delays in answering letters or expediting business. The intervention of The Law Society seeking the solicitor's observations may help the individual case, possibly at the expense of others; but these seem the most unsatisfactory complaints to resolve, apart from the exceptional case which justifies The Law Society in exercising its statutory discretion to issue the next practising certificate subject to conditions.



### **Dishonesty**

29. My impression is that The Law Society's handling of complaints of dishonesty is satisfactory to the public. There is, however, one problem in this field which has caused me concern and it is illustrated by a case brought to my attention. A solicitor was dismissed by his firm for financial irregularities although there was no actual loss to the clients or partners. The facts were reported to The Law Society but, while investigations were continuing, the solicitor was employed by another firm and later convicted of **stealing its clients' money**. My impression is that The Law Society was not **slower in its enquiries** than, say, the fraud squad would have been. Nevertheless **during the period of secrecy** surrounding the Society's investigation unsuspecting members of the public suffered loss. The possibility of compensation by the **partners** or by the Society's compensation fund does not wholly solve the clients' difficulties. At my invitation The Law Society is considering the problem of **protecting the public** while investigations are continuing.

## **THE NATURE OF THE COMPLAINTS**

### **Delays**

30. The most frequent complaint is of delay in handling **clients' affairs**. Whilst the processes of litigation sometimes seem slow to a layman, those cases which I have examined suggest that legal processes are not normally the exclusive causes of delay. In many cases it is possible, with the benefit of hindsight, to see where substantial time (and probably costs) could have **been saved**, although some of these delays are certainly not of the solicitors' **making**. Delays in getting expert or professional opinion or in correspondence with other organisations (including Government Departments) are sometimes considerable, and can be very infectious. Whether delays attributable to solicitors amount to negligence or misconduct can be debatable and it is in these borderline cases more than others that I have sought (or invited The Law Society to seek) further information. In one case, I recommended that the Council of the Society should reconsider the complaint as an issue of professional conduct.

31. Delays, whether in litigation or not, are not just a **question of waiting for results**. Quite apart from the emotional strain, the whole circumstances of life may change when five, six or even more years elapse between the original event and the conclusion. Some clients, perhaps obliged to keep solicitors in funds in the intervening period, have to make radical alterations to their life-style even to the point of staving off bankruptcy. My experience is that delay is most commonly complained of in matrimonial proceedings, in the administration of estates and in some particular areas of civil litigation such as building disputes and accident claims.

32. I believe there is need for the causes of delays in the whole process of the law to be studied by those with the necessary knowledge **and sources of information**. By no means all these delays are wholly within the control of solicitors or curable by stop-gap measures at particular points or **by disciplinary action** in individual cases.

### **Solicitors' charges**

33. Solicitors' charges are not matters which I have any powers to consider. They do, however, form the basis of a large number of complaints and are implicit in others in which the prime complaint is that the solicitor has not handled the client's affairs as well as may be. On questions about charges I have not been able to do more than draw attention to The Law Society's obligation (in matters not involving litigation) to scrutinise a solicitor's bill at the instance of the client and issue a certificate as to its fairness and reasonableness, and to

the client's right in all cases to have his solicitor's bill "taxed", that is assessed, by the court.

34. The root cause of complaints about charges often seems to be that, since the client does not know what charges may be expected, the final bill comes as a complete surprise. Although the indications are that fees are seldom now considered a subject too delicate to mention, cases coming to me show that solicitors' estimates are sometimes vague and optimistic and the client has no idea what costs have been incurred to date. I have studied the accounting methods of one firm of five partners who use a time-costing system based on a recommendation of The Law Society: they are able to tell a client, at a few minutes' notice, what his charges are up to the previous evening, and the partner or legal executive dealing with a client's affairs can tell him when present costs are approaching earlier estimates made, and make fresh ones. With such a system and sufficient explanation of what has to be charged for, a client knows where he stands. It is where explanation is inadequate and accounts not available that he becomes suspicious and feels he has been taken for a ride.

35. The public are encouraged to "shop around" in most of their affairs, from buying detergents upwards. It is very reasonable that the client should seek an estimate from his solicitor and that the solicitor should give one, explaining where uncertainties may lie, and if unforeseen work becomes necessary it seems to me that the client should be kept informed. In one recent case, the purchaser of a house sought estimates on the telephone from five local solicitors and instructed those whose estimate was marginally the cheapest. Their ultimate charges were substantially larger than the estimate. No explanation was offered, and the client deduced a lack of care in business methods and drew some inference that there was impropriety in offering the original estimate.

#### The solicitor's lien

36. The solicitor's lien on documents is usually a procedure clients only discover by harsh experience—sometimes when the client is disenchanted and seeks to change solicitors without paying the full bill. Although I have come across cases in which solicitors have as a courtesy waived a lien on documents without prejudice to any further action they may take to recover fees, I do not think the securing of costs by the exercise of a lien is a wholly satisfactory procedure.

37. In my view a client should have his papers returned when he needs them to pursue further action on which he is seeking other advice. The solicitor can always take proceedings for his charges, in which the client is at risk for costs, but for the client to be obliged to incur delays and charges in taking legal action for the recovery of documents seems to me unfair.

38. It was in a case where solicitors expressed the intention of retaining papers which had no relation to the particular business in respect of which the clients owed them money that I recommended that The Law Society should reconsider the issue as a matter of conduct constituting a possible abuse of the lien.

#### THE CIRCUMSTANCES GIVING RISE TO THE COMPLAINTS

39. I have kept a record of the general circumstances in which complaints have arisen in the hope of detecting the areas where significant discontent may exist. These circumstances are broken down in the statistics set out in Appendix II. It is noticeable that I have had very few complaints arising from criminal cases.

40. Property disputes include a wide variety of matters which I have as yet been unable to categorise precisely. Many clients have difficulty in accepting what it may be necessary to show before a judge when they have already convinced themselves that they "know all the facts". The time taken and expense

incurred in seeking expert opinion of surveyors, valuers, accountants and so forth is resented. Many people have little idea of the work involved in conveyancing or the administration of estates and tend to draw parallels with the experience of others where in fact the circumstances may be quite different. The tenants and landlords with whose cases I have been concerned do not seem to understand the law or the principles on which it is based.

41. In divorce, the idea that the greater sinner should suffer most in maintenance, property division or the custody of children dies hard in the public mind. Some husbands and wives are appalled at what they consider untruths in the other side's statements—and they may well be right: their knowledge is probably better than solicitors' or counsel's in personal matters.

42. The majority of circumstances in which complaints have arisen show how incomplete is the public understanding of the law and legal processes. In some cases I have the impression that solicitors' explanations in consultation were inadequate, but there are also clients whose views had intractably hardened before seeking advice to the extent that they cannot believe other opinions are even possible. Some progress in educating the public has been made. The Law Society has published booklets and makes film strips and lectures available to schools on request; but much of the public's knowledge is haphazardly gathered from newspapers, television or hearsay and applied to their own affairs without real discrimination. Citizens' Advice Bureaux and Law Centres endeavour to make information and a degree of advice more readily and economically available but this, like the solicitor's advice, may be too late. Whether it is possible to teach in schools as a compulsory subject sufficient law for citizens later to have a reasonable understanding of their own affairs I do not know, but until there is more complete understanding many an individual's recourse to law will be a traumatic experience in which a sense of injustice will remain. Complaints will still be made to those who are prepared to listen and bitterness set in when no more can be done.

#### **The powers of the Lay Observer**

43. At this stage in my experience, I have not found the Lay Observer's powers inadequate. I have been grateful for The Law Society's co-operation in further enquiries when it has been questionable whether the subject is within my powers or not. This has helped me to form opinions, albeit tentative, on some of the needs I have mentioned. My general feeling is that it is unlikely that a lay observer would have the knowledge or the experience on which to found reliable opinions on such matters as negligence and professional competence, even if he had the powers to extract information from all sources. For the same reason I do not think he is a suitable person to give practical information on the application of the law to a particular case. It is a formidable task for a layman to gain even some knowledge of law and procedures evolved over centuries, but to expect him to gain an understanding sufficient for some kind of adjudication in individual cases would be to make him more lawyer than layman.

44. Nevertheless, the Lay Observer acquires a considerable body of information about the areas of public dissatisfaction with the legal process: cranks and disgruntled litigants are among those who complain to me, but they are not a majority. In drawing attention to some features of the legal process which seem to me, a layman, unsatisfactory, I am seeking to illustrate what I am coming to believe is a significant truth—in many cases the public finds the working of the law to be too slow, too expensive and too difficult to understand.

#### **Summary of impressions**

45. My total sample of cases is too small to form positive conclusions, but I have gained a number of impressions which I summarize here. I include certain tentative suggestions for improvement in aspects of the legal process where a need has come to my attention.

- (1) I have not found The Law Society's treatment of complaints inadequate except in some minor matters of detail or explanation.
- (2) Since the Society has no power to decide complaints concerning negligence or professional competence a considerable amount of its work in unravelling complaints is necessarily unproductive.
- (3) The indications are that some nugatory effort would be saved if the public had a better understanding of the law and legal processes and if explanation in some solicitors' offices was more complete. There is a continuing need for better public understanding of the principles and processes of the law, particularly before individuals become emotionally involved in their particular affairs.
- (4) There is a need to ensure that members of the public have confidence that they will be competently and impartially advised when they seek to bring proceedings against solicitors for negligence.
- (5) There is a need for the public to have confidence that the skill and experience of solicitors acting in certain litigation is not in question and that undue advantage cannot be taken by those of greater expertise.
- (6) Delays throughout the whole range of legal processes cause considerable distress to individual members of the public. There is a need for these delays to be studied with a view to reducing them.
- (7) In some solicitors' offices there is a need for better standards of estimating costs and furnishing up-to-date accounts.
- (8) There is a need to review the effects of the exercise of a solicitor's lien and to eliminate those aspects which are not in the public interest.
- (9) Despite some indications of public demand to the contrary, there is no case at present for an increase in the Lay Observer's powers.

(Signed) GODFREY PLACE

Lay Observer

4th March 1976.

APPENDIX I to this Report is reproduced at p. 412 above.



## APPENDIX II

### Statistics

(17.2.75 to 31.1.76)

#### *The Lay Observer's Work*

|  | <i>Number</i> |
|--|---------------|
| 1. Correspondents ... ..   | 437           |
| 2. Allegations accepted for examination ... ..   | 162           |
| 3. Allegations disposed of ... ..  | 140           |
| 4. Cases where Lay Observer criticised The Law Society's treatment of a complaint (including two cases where he recommended the Council of The Law Society to reconsider a complaint as raising an issue of professional conduct) ... .. | 13            |

#### Nature of Complaints whose treatment by The Law Society was examined by the Lay Observer

| <i>Nature</i>   | <i>Number</i> |
|---|---------------|
| 1. Undue delays ... ..  | 82            |
| 2. Withholding documents or information, exercise of lien ... | 47            |
| 3. Accounts ... ..  | 14            |
| 4. Disclosing confidential information... ..                  | 13            |
| 5. Conflicts of interest, collusion ... ..                    | 12            |
| 6. Unqualified staff ... ..                                   | 10            |
| 7. Negligence or incompetence ... ..                          | 13            |

*Note:* In most cases the above classification refers to the principal complaint raised by the correspondent, but in some cases two or more complaints are included from a single correspondent.

#### Circumstances of Complaints whose treatment by The Law Society examined by the Lay Observer

|   | <i>Number</i> |
|---|---------------|
| 1. Criminal proceedings ... ..  | 3             |
| 2. Matrimonial proceedings ... ..   | 29            |
| 3. Administration of estates ... ..   | 23            |
| 4. Landlord and tenant ... ..   | 16            |
| 5. Conveyancing ... ..  | 7             |
| 6. Miscellaneous property disputes (boundaries, buildings, patents, motor-cars, stocks and shares, etc.) ... .. | 62            |
| 7. Contractual disputes ... ..  | 3             |
| 8. Professional negligence (architects, doctors, solicitors) ...  | 4             |
| 9. Personal injury cases ... ..   | 3             |
| 10. Miscellaneous ... ..  | 12            |

*Note:* I have also kept record of the circumstances of complaints which were not within my powers to examine: they indicate a very similar proportion to the above.

## SECOND ANNUAL REPORT OF THE LAY OBSERVER UNDER SECTION 45 OF THE SOLICITORS ACT 1974

*To the Right Honourable the Lord Elwyn-Jones, C.H.,  
Lord High Chancellor of Great Britain*

I have the honour to submit my Annual Report for my second year in this appointment, which I completed on 16th February 1977.

### REVIEW OF WORK DONE DURING THE YEAR

2. 305 correspondents have represented their problems to me during the year. 127 have concerned The Law Society's treatment of a complaint about a solicitor's conduct into which I have enquired, and in 117 I have completed my examination.

3. In six cases I have informed The Law Society that I felt a more complete treatment by the Society was desirable, in three of which I have recommended that the matter be referred to the Council rather than decided by an individual officer. In four cases I have recommended that the decision of the Society be reconsidered. In one (which required expedition rather than reconsideration) the Council rebuked the solicitor in an incidental matter represented originally to me; one is as yet undecided; one was more completely explained but not altered in substance; and in the fourth the Council expressed certain wishes to the solicitor to which I refer in paragraph 19 of this report.

4. I have continued to see individual complainants where I have thought verbal explanation warranted this or to determine the true nature of the complaint where correspondence was not clear. For some, personal explanation has been an advantage and others may have found a certain therapy in talking about their problems—it is surprising how less conducive to acrimony is the spoken rather than the written word.

5. Although the number is rather smaller than last year, the types of problem the public feel they encounter follow a very similar pattern.

### THE LAW SOCIETY'S TREATMENT OF COMPLAINTS

6. I would again emphasize that no case of serious dishonesty—such as misappropriation of funds or deliberate deceit of a serious nature—has been referred to me after decision by The Law Society. I conclude, as I did in paragraph 12 of last year's Report<sup>1</sup>, that the Society discharges its duties in these respects with thoroughness.

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1. *First Annual Report of the Lay Observer 1975-1976*, H.C. 332 (1975-76).

7. In a number of cases the public have alleged that The Law Society has been slow in determining their complaints. Unless circumstances warrant an immediate intervention by the Society into the solicitor's records—as would be the case in serious dishonesty—the Society's practice is to obtain the solicitor's written observations. This requires swift and accurate co-operation by the solicitor complained of or the complainant becomes suspicious and untrusting. Despite increased experience, I still find it difficult to set a yardstick on what is a reasonable time for complaints to be determined by the Society. In two cases this year there was a total absence of response from the solicitors to the Society's letters for more than two months, in spite of reminders. In one of these cases the issue of not replying to the Society's letters has itself been brought before the Council as a matter of conduct. In a few other cases solicitors' replies have been incomplete in detail, leading to further correspondence and delay. Any lack of complete co-operation in these written representations by an individual solicitor or firm brings the reputation of the profession and the standing of The Law Society into question in the eyes of the public.

8. In the considerable majority of matters referred to me it is not the propriety of the solicitor's conduct that is in question, but rather is there criticism of how he has done his work in the broadest sense. Complaint may be levelled at any part of the whole range of his activity: the time taken, explanations given, the quality of the advice, the fees charged. Where the propriety of conduct is in question in complaints referred to me after The Law Society's decision, it is of a nature which would, if substantiated, be more likely to merit deprecation or rebuke rather than disciplinary proceedings. Many of these complaints cannot be satisfactorily resolved on the conflicting information represented to the Society. Some are so trivial that detailed investigation is not justified. Nevertheless, my own view is that not only individual firms of solicitors but the profession generally would benefit from the knowledge of even trivial complaints which indicate an area of public dissatisfaction. I believe there is a service to the profession, and therefore to the public, that The Law Society can perform in the consideration of these complaints which are, in the final count, criticisms of the competence of solicitors.

### THE NATURE OF THE COMPLAINTS

9. These follow a very similar pattern to last year. Allegations of negligence, incompetence or dissatisfaction with the advice given are implied in the majority of complaints even where the complaint purports to be about professional conduct. The public are most usually seeking a redress which it is not within The Law Society's powers to determine.

#### Complaints about competence generally

10. I have found no reason to revise my impression of last year<sup>2</sup> that the prime need for the client seeking redress for the alleged negligence of a solicitor is that the client should have confidence that he will be competently and impartially advised. Suggestions continue to reach me that negligence might be dealt with on representations, written or oral, before a committee—either with independent lay members or within the aegis of The Law Society—but I do not believe there is a proper substitute for the individual client explaining his allegation to an independent skilled adviser who gives him clear and authoritative advice, and continues to act for him in any subsequent proceedings.

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2. *First Annual Report* H.C. 332, para. 45 (4).

11. In a number of complaints the competence of the solicitor, in the sense of his skill in handling the affairs in which he is instructed, is questioned. But The Law Society does not consider complaints of incompetence or negligence. Whilst redress for the client can only be awarded by the courts, it seems to me very desirable in the interests of the profession and of the general public that lessons from mistakes are learnt. I have given some thought to whether The Law Society would perform a useful function by considering complaints about competence and I believe the Society would be wise to look through this window on the world. Although the courts, the legal profession and the press all "feed back" experience which helps the profession to improve standards, complaints about matters which do not reach public hearing are an important source of information which should not be overlooked.

12. Complaints as to competence which reach me cover the whole spectrum of a solicitor's work and I believe that in many cases The Law Society could act without risk of prejudice to legal proceedings. I offer some examples. Where office error is apparent, such as a date missed, witnesses not warned, promised follow-up action not taken and so forth, I believe The Law Society should at least ensure that the senior partner of the firm is informed so that he may take corrective action in his office administration: the facts of office error are seldom in dispute. Delay is pernicious. It should be the subject of Law Society comment even if only in the form of an opinion. Where explanation to the client has failed (not always the solicitor's fault) the failure should be made known to the solicitor so that the experience is not lost. It is not practicable for The Law Society to consider the quality of advice in individual cases but the circumstances and the care with which it is given may merit comment.

13. I have been glad to see that in the past year the Society has advised the profession on providing estimates of conveyancing fees. But evidence of ill-considered estimates in other matters continues to reach me: woolly advice in the form of over-optimistic estimates for damages at too early a stage can be very misleading to clients; a client's advisers should not surprise him when recommending a settlement at the door of the court; and counsel's opinion must be available when there is still time for calm thought.

14. It may well not be possible in every case for the complainant to be informed of the action taken or opinion expressed by the Society, but this does not seem to me adequate reason for the Society giving no consideration to a complaint which raises issues of competence and where no misconduct is apparent. In many cases the information in a complaint gets no further than the individual officer of the Society, and neither the firm nor any partner is aware of the complaint. The experience to be gained for the future is lost.

#### Complaints relating to fees

15. Solicitors' fees, on which I can make no comment and The Law Society can only express an opinion where proceedings on behalf of a client have not begun, are a frequent source of complaint. The public, when not legally aided, find the seeking of advice very expensive and become very worried about costs when litigation seems possible. At the same time, my impression is that solicitors find certain business insufficiently remunerative and delegate some work in a way that seems to the client impersonal. As I mentioned in last year's Report<sup>3</sup>, efficiency suffers when solicitors take on more work than their offices can absorb.

16. There are also cases where one wonders whether the game is worth the candle.

17. In one case, the client's costs in seeking the variation of a maintenance order were more than double the annual increase finally settled: fortunately for her, she was legally aided.

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3. H.C. 332, para. 28.



18. In another case, the professional fees for a man seeking compensation for damage caused by main road water flowing into his cellar already approach the amount he paid for his house, with the case not yet come to trial. This latter case is one of a small number where action against a local authority requires the prolonged outlay of considerable funds. Despite some public impression to the contrary, it is not my experience that solicitors are unwilling to take action against local authorities. Rather, my impression is that local authorities are reluctant to settle without full court proceedings and solicitors must therefore warn clients that funds may remain at risk for a long time.

19. One case was referred by me to The Law Society for re-consideration. A legally-aided client was plaintiff in an action against a company, who offered a settlement of £120 at the door of the court, each party paying their own costs. Counsel was advised by the plaintiff's solicitors that the plaintiff's costs would be £90, and on these terms the settlement was agreed. The solicitors later submitted a bill considerably in excess of £120, making the settlement ridiculous. The Council of the Society expressed the wish that, although the fees charged were a matter of law which it had no power to decide, £30 should be refunded by the solicitors to the client. The solicitors declined to do so, saying that there were also pre-certificate costs which they had intended to waive. To my mind, the client should have been given a reasonably accurate forecast of costs in order to decide whether to accept the settlement, and the solicitors' failure to provide this forecast and stand by it showed inadequate competence and understanding. That the sums involved are relatively small seems only to emphasize an obstinate disregard for the reputation of their own firm and the profession.

#### THE CIRCUMSTANCES GIVING RISE TO THE COMPLAINTS

20. As last year, most complaints have arisen from disputes as to property, divorce and matrimonial proceedings and the administration of wills and estates: all very emotional subjects.

##### **The client's fallibility**

21. Much stems from incomplete understanding: a boundary may be impossible to define with exactitude from earlier plans; spouses seek to defend divorces to "clear their names" where advice in law is that the marriage has irretrievably broken down; and beneficiaries of wills misunderstand the duties of executors. In my experience as Lay Observer, the public are often ignorant of the principles of law and over-optimistic on what the courts can do, particularly in relation to the awards of damages. Popular misconceptions continue in spite of apparently competent legal advice: the common supposition that failure to meet a contract is criminal fraud or theft, the "guilty party" in divorce, and the "rights of the first born" in inheritance. Too often does the unsuccessful litigant describe the outcome as "I was found guilty".

##### **The solicitor's fallibility**

22. Whilst it is sometimes too late for a client to overcome pre-conceived notions by the time he first takes legal advice, there are nevertheless cases where I have felt a lot of sympathy for clients who have suffered from inadequate early explanation or advice by their solicitors.

23. Again, settlements at the door of the court seem to me unsatisfactory if advice to accept the settlement comes as a complete surprise, the atmosphere in the court lobby is not conducive to making final and far-reaching decisions. "After two-and-a-half hours of arguing in the main hall I was so confused that I ran out screaming", as one lady described her plight. In another case, which had taken two-and-a-half years to come to court, counsel advised a few minutes before the court opened that the case would certainly be lost and costs considerable. In another, counsel was brought in at the last minute because the

solicitor could not attend and took a completely opposite view to that of the solicitor.

24. Charges of inaccuracies (usually expressed as "perjury" or "fraud") in the other party's affidavits, continue to be represented as complaints against that party's solicitors despite advice to the complainant from his own solicitor and from The Law Society that statements in affidavits are matters for the courts to decide. Nevertheless I have some impression that a "belt and braces" approach in the preparation of affidavits, especially in matrimonial proceedings, may cause unnecessary acrimony. I have a lot of sympathy for the lady whose husband, legally aided, petitioned for divorce on the grounds of 19 years' separation (which was agreed) but also referred to her alleged sins of 20 years ago (which she disputed). She felt very bitter at not being granted legal aid to defend the divorce itself, because she wanted to clear her name and felt that legal aid for the ancillary matters of maintenance was but poor consolation.

25. The Law Society is, I understand, now keeping statistics of the nature of complaints and the circumstances in which they arise with a view to their use for the wider information and guidance of the profession.

### SUMMARY

26. The impressions I had a year ago remain very much the same today and I have repeated them in Appendix I for convenience of reference. Appendix II contains a detailed breakdown of the cases.

27. In essentials, the public dissatisfaction that has reached me in these past two years reveals two needs: for a greater competence on the part of some solicitors and for a greater understanding by the public of the principles and processes of law and the role of lawyers and the courts in our society.

28. My sample is very small in relation to the vast amount of legal business transacted and I have no reason to believe that lack of competence by solicitors is more general than is indicated in the complaints made to The Law Society and myself. Nevertheless, that does not seem to me a reason why specific examples should go unheeded and I feel some impatience when there is a repetitive similarity in these types of complaint. Whilst the individual client must seek redress in legal proceedings, I believe The Law Society can make greater use of the information gleaned from public complaint in the continuing improvement of professional standards.

29. I believe my sample of the lack of public understanding of the principles and processes of law is representative of a much wider lack of education. There seems to be a point in human affairs where emotion overtakes reason and no logical process thereafter will cure the bitterness an individual feels at an outcome not to his liking. A great many of our people today have legal problems concerned with their employment, marriage, property and in criminal matters, and so scant is their knowledge that it is too often impossible for them to take a reasoned view on the advice given to them when emotions have clouded logic. Nor are they always able to recognise the need for legal advice. Good as have been The Law Society's endeavours to make film strips and lectures available to schools, ignorance and serious misconceptions are likely to continue until the principles and processes of law are taught in school as a curriculum subject: after school it is too uncertain, too haphazard and frequently too late.

(Signed) GODFREY PLACE

Lay Observer.

2nd April 1977.

## APPENDIX I

### Summary of impressions in 1975-76 report

*(Repetition of paragraph 45 (1)-(9), in 1975-76 Report<sup>4</sup>)*

1. I have not found The Law Society's treatment of complaints inadequate except in some minor matters of detail or explanation.
2. Since the Society has no power to decide complaints concerning negligence or professional competence a considerable amount of its work in unravelling complaints is necessarily unproductive.
3. The indications are that some nugatory effort would be saved if the public had a better understanding of the law and legal processes and if explanation in some solicitors' offices was more complete. There is a continuing need for better public understanding of the principles and processes of the law, particularly before individuals become emotionally involved in their particular affairs.
4. There is a need to ensure that members of the public have confidence that they will be competently and impartially advised when they seek to bring proceedings against solicitors for negligence.
5. There is a need for the public to have confidence that the skill and experience of solicitors acting in certain litigation is not in question and that undue advantage cannot be taken by those of greater expertise.
6. Delays throughout the whole range of legal processes cause considerable distress to individual members of the public. There is a need for these delays to be studied with a view to reducing them.
7. In some solicitors' offices there is a need for better standards of estimating costs and furnishing up-to-date accounts.
8. There is a need to review the effects of the exercise of a solicitor's lien and to eliminate those aspects which are not in the public interest.
9. Despite some indications of public demand to the contrary, there is no case at present for an increase in the Lay Observer's powers.

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4. H.C. 332.



## APPENDIX II

### Statistics (1.2.76 to 31.1.77)

#### *The Lay Observer's Work*

| <i>(Previous year's total in brackets)</i>   |     | 1975-76 |
|--|-----|---------|
| 1. Correspondents ... ..   | 305 | (437)   |
| 2. Allegations accepted for examination ... ..   | 127 | (162)   |
| 3. Allegations disposed of ... ..  | 117 | (140)   |
| 4. Cases where Lay Observer criticised The Law Society's treatment of complaint (including four cases where he recommended the Council of The Law Society to reconsider a complaint as an issue of conduct) ... .. | 10  | (13)    |

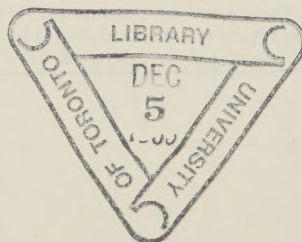
#### Nature of complaints whose treatment by The Law Society was examined by the Lay Observer

|  |    |      |
|--|----|------|
| 1. Undue delays ... ..   | 31 | (82) |
| 2. Withholding documents or information, exercise of lien ...    | 13 | (47) |
| 3. Accounts ... ..   | 27 | (14) |
| 4. Disclosing confidential information ... ..                    | 7  | (13) |
| 5. Conflict of interest, collusion ... ..                        | 11 | (12) |
| 6. Unqualified staff ... ..                                      | 3  | (10) |
| 7. Negligence, incompetence or dissatisfaction with advice given | 35 | (13) |

*Note:* In most cases the above classification refers to the principal complaint raised by the correspondent, but in some cases two or more complaints are included from a single correspondent.

#### Circumstances of complaints whose treatment by The Law Society was examined by the Lay Observer

|   |    |                             |
|---|----|-----------------------------|
| 1. Criminal proceedings ... ..                            | 4  | (3)                         |
| 2. Matrimonial proceedings ... ..                         | 36 | (29)                        |
| 3. Administration of estates ... ..                       | 18 | (23)                        |
| 4. Landlord and tenant ... ..                             | 3  | (16)                        |
| 5. Conveyancing ... ..                                    | 13 | (7)                         |
| 6. Miscellaneous property disputes not included above ... | 26 | (62)                        |
| 7. Contractual disputes ... ..                            | 7  | (3)                         |
| 8. Professional negligence ... ..                         | 2  | (4)                         |
| 9. Personal injury ... ..                                 | 3  | (3)                         |
| 10. Employment ... ..                                     | 4  | (not previously classified) |
| 11. Miscellaneous ... ..                                  | 11 | (12)                        |









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